THE

ENGLISH Historical Library.

PART III.

Giving an Account
OF OUR
Records, Law-Books and *Coins,*
FROM THE
CONQUEST
To the End of
Q. Elizabeth's Reign:
So far as they are
Serviceable to Hiſtory.

By WILLIAM NICOLSON, A. M.
Arch Deacon of *Carliſle.*

Antiquitates ſeu Hiſtoriarum Reliquæ ſunt tanquam Tabulæ Naufragii, quas homines induſtrii, & Sagaces ex Genealogiis, Faſtis, Titulis, Numiſmatibus, Archivis & Inſtrumentis tam Publicis quàm Privatis, à Temporis Diluvio eripiunt & Conſervant. Fr. Bacon, *de Aug. Scient. Lib.* 2. *cap.* 6.

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MDCXCIX.

Viro perilluſtri,

Legum, & Regiminis ANGLIÆ *Legalis,*

Aſſertori Strenuo,

D. CHRISTOPHERO MUSGRAVE,

Equiti & Baronetto,

In Supremis Regni Comitiis Academiæ

OXONIENSIS *Procuratori,*

Tertium hoc BIBLIOTHECÆ HISTORICÆ *Volumen,*

Grati animi, & Obſervantiæ non Simulatæ

MONUMENTUM

P.

Servus illi non uno nomine Adſtrictiſſimus,

Guil. Nicolſon.

THE

PREFACE.

TO enquire into the Hiſtory and Original of our *Engliſh* Law, may ſeem an Undertaking far too Adventurous, ſince the beſt of our ancient Lawyers are pleas'd to declare, that *Her Foundations are not known*: That we know not where to look for her Tracings; foraſmuch as the moſt Primitive *Britiſh* Laws, the Fountain of all that follow'd, were elder than even the Knowledge of Letters in this Countrey. Of this kind we are taught to believe our old Common Law

to be: For (a) *Bracton* calls it *Jus non Scriptum*, and (b) *Fleta* (who copies him pretty exactly) *Leges non Scriptæ*. These Laws (c) Sir *John Forteſcue* ſays expreſsly were never alter'd by the *Romans*, *Saxons*, *Danes*, or *Normans*; who all found 'em ſo agreeable to the firſt Rules and Dictates of Right and Primitive Reaſon, that they were ſenſible they had none better to eſtabliſh in their ſtead. This Doctrine looks Venerable; and therefore ſome of the Gentlemen of the Long Robe have always kept at a decent diſtance from it. It has been their Mode to place any old Term or Cuſtom, whereof they meet not

(a) Lib. 1. cap. 1. (b) In Proœm. (c) De laud. Leg. Angl. cap. 17.

with

with the Original in the printed Statutes, Regiſter or Year-Books, under the Head and Title of the (*a*) *Common-Law*; and this ſuperſedes all farther Enquiry into its Parentage and Pedigree, as effectually as if (*Hero*-like) it were deſcended from *Mars* or *Jupiter*. Sir *Edward Coke* (*b*) ſays, the Name of *Common Law* was firſt given by *Edward* the Confeſſor, to a Collection which he made out of all the Laws of his Anceſtors. But I leave it to our more modern Profeſſors, whether that King's Ordinances (as they are publiſh'd by *Lambard*) can juſtly challenge any ſuch Denomination. Theſe were indeed confirm'd by *William* the Conqueror, at the (*c*)

(*a*) Vid. *H. Spelm.* Gloſs. voc. *Engleberia.* (*b*) Rep. par. 3. in Proœm. (*c*) *M. Paris*, ad An. 1070.

earneſt Suit of the *Engliſh*; but qualify'd with the Addition of many (*Norman*) Feudal Services and Tenures. To ſay that any of theſe are of an Eternal and Immutable Nature, is to make them Divine, and not Humane. So that tho ſome particular Precepts are by all Nations borrow'd from the common and unalterable Principles of Reaſon, which is a part of God's own Law, yet the Body of each Countrey's Municipal Conſtitutions was ever ſubject to the ſame Changes and Alterations with the State it ſelf; and a diligently exact obſervance of theſe, will always furniſh us with the beſt and moſt uſeful part of its Hiſtory.

To this good End, I cannot but hope that the Study of our *Engliſh* Laws will ſhortly grow more fa-

faſhionable in our Univerſities: Where (as all other kinds of good Literature, ſo eſpecially) the Knowledge of our *Britiſh* Antiquities begins to flouriſh in greater Perfection than formerly. The only Reaſon that one of our Old (*a*) Lawyers could give his Prince, why our Academicks in his Days were unacquainted with the Laws of the Land, was becauſe they were ſtrangers to the Tongue wherein a great many of 'em were penn'd: But that Obſtacle is ſufficiently remov'd, ſince (as an Excellent Perſon has modeſtly noted in his own Caſe) the *French* Language is now ſo *very common among us, that it is not thought a Part of Learning to un-*

(*a*) Sir *J. Forteſc.* de Laud. Leg. cap. 48.

derſtand

derſtand it. The local Statutes oblige the Scholars at *Cambridge* to be (*a*) converſant in the Municipal Laws of their Native Countrey; and this good Reaſon is aſſign'd for the Injunction, *ut differentias Exteri Patriiq; Juris ſic cognoſcant*, that they may ſee how far *England* excells other Nations in the wiſdom of their Compoſure. Surely the *Ratio Legis*, in this particular, will hold as ſtrong at *Oxford*. From ſuch Students we are to hope for a Regular Hiſtory of the Original and Progreſs of our *Engliſh* Laws; a work, which (to our great diſhonour) is ſtill wanting in this Kingdom: Since the Men of chief Learning and Emi-

(*a*) Vid. J. *Cowel*, in Præfat. ad Inſtit. Leg. Angl.

nence

nence in our Inns of Court are not at leiſure for ſuch Enquiries, the whole of their time being employ'd in (what is more Serviceable to the ordinary Duties of their Calling) the Practical Part of their Profeſſion, and Attendance on the Cauſes of their Clients. This defect had been long ſince amply ſupply'd, had the Project of thoſe Learned Perſons (who, in the beginning of this Age, had form'd themſelves into a Society of Antiquaries) met with a ſuitable Encouragement; their firſt ſubject, propos'd to be treated on and conſider'd, being (*a*) *De Antiquitate Legum Angliæ.*

How neceſſary the Study and

(*a*) Vid. D. *Tho. Smith*, in Vit. D. *Rob. Cotton*, pag. 9.

Know-

Knowledge of our Laws and Law-Books are to compleat the Hiſtorian, has been obſerv'd by the great (*a*) Oracle of thoſe Laws; who takes notice that the moſt Learned Men of that Profeſſion, for want of skill in Legal Antiquities, have been groſsly miſtaken in treating of theſe matters. He inſtances in *Hoveden* and *Paris*, who both maintain that Juſtices-Itinerant were firſt Inſtituted by *Henry* the Second, and laid aſide by *Edward* the Third; in both which Particulars they were out: And therefore he adviſes that when our Hiſtorians meddle with matters of Law, they would conſult thoſe that are knowing in them.

(*a*) D. *Ed. Coke*, Inſtit. Par. 2. p. 498, 499.

I think, 'twould be as adviſeable for the Man that attempts the Writing of our Hiſtory to endeavour to be ſo much Maſter of the Law, as to be his own Counſellour and Guide. How many ſcandalous miſtakes was *Polydor Vergil* guilty of, meerly for want of skill in the Hiſtory of our *Engliſh* Laws? Miſtakes, which (if there had been no other failing in it) were ſufficient for ever to diſcredit his Book. Had he been Maſter of that Accompliſhment, which we are now wiſhing for in him that pretends to write the Story of this Kingdom, he could never have aſſerted, that *William* the Conquerour firſt Inſtituted the Sheriff's Office, and brought in Tryals by a Jury of twelve Men; that *Henry* the Firſt was the Contriver of the

Aid

Aid (which our Law-Books call *à file marrier*) for Augmentation of the King's Daughter's Dowry, *&c.* not to mention his Errours relating to the common Uſage and Cuſtomes of our Parliaments and Inferiour Courts of Judicature, which are innumerable.

Perhaps, the Reader may tell me, that even the Account which he meets with in ſome of the following Chapters (about the Inſtitution and Modern proceedings of theſe Courts) are likewiſe a little too Lame and Unſatisfactory: But he ought to conſider that 'tis not my Buſineſs to Write a Hiſtory, but to give what directions I could for the doing of that hereafter. I pretend to touch no farther upon theſe matters, than what will juſt

ſerve

ſerve for an Introduction or Step to (what is chiefly intended) the Pointing at ſuch latent Records as may be for my Hiſtorian's purpoſe: So that, if the main Building proves good and firm, I am not much concern'd how Stately and Strong, or how Slight and Pitiful, my Scaffolding may be.

Neither ought it to be expected from me, that every little Pamphleteer that has occaſionally Written on any ſingle Point of Law, and only repeated what has been a Hundred times obſerved by better Authors, ſhould be taken Notice of. 'Tis enough to ſay, I have chiefly concern'd my ſelf with Writers of an Antient ſtanding and good Repute. Some others I may mention, that do not deſerve either of thoſe Cha-

Characters: But I have designedly omitted many that I knew to be Triflers, and several that I suspected to be so. There are Books which may be very good in their kind, and serviceable to one design'd for the Profession of the Law, which I did not think so necessary a Part of our Historian's Library; and therefore the Reader will in vain expect to meet with them in the following Treatise: Such as Sir *John Doderidge*'s English Lawyer, *H. Fulbeck*'s Preparative, and *W. Philip*'s Directions for that Study; all which have excellently well remark'd those Qualifications that are requisite in the Professors of our Law, and prescrib'd the Methods most proper for the Compleating of their Knowledge in it, but do not seem to carry in them

them, what ſo nearly concerns the Subject under our preſent Conſideration, or what will regularly fall within any of the enſueing Chapters. Tables of Fees, Books of Precedents for Attourneys and their Clerks, &c. I thought not worth my Notice; as uſeleſs and foreign to Hiſtory. It's more than probable that I am mistaken in omitting many Authors and Books that have very well deſerv'd to be mention'd; and that, on the other hand, I have noted down others that are Trivial, and unworthy the Rank I have given them amongſt Writers of a better Faſhion and Quality. They that think this Work fit to be encouraged, will (I hope) be ſo kind as to inform me of what faults they obſerve of either ſort; and

they ſhall be very gratefully corrected, if God continues my Life and Health till I can bring this imperfect Attempt to ſomething that looks more complete than a bare Eſſay. I do confidently hope that the Book will prove ſerviceable to a great many Gentlemen, whoſe ſtudies and acquaintance in the Laws of this Kingdom have enabled them to make large Additions to what I here preſent them with: And, if my Endeavours to ſerve them have merited it, I do not doubt but they will kindly let me know what is wanting, and how it may be ſupply'd. I ſhall gratefully acknowledge any ſuch obliging Information.

I have not here (as in the two foregoing Parts) always noted the Time and Place of various Edi-

Editions. The Books that relate to the Laws of *England* are generally Printed at *London*, where our Inns of Court are: And the ſeveral Editions, of thoſe that are reprinted, do commonly agree in the Main. Where there are any conſiderable Variations, I have (to the beſt of my knowledge) noted down the Years wherein the moſt correct Copies were publiſh'd: Otherwiſe, I have contented my ſelf with marking the ſize of the Book, and its Price, as the *Term-Catalogues* (and thoſe by *Clavel* and *Baſſet*) have given them. I may, I think, avow that I have read moſt of the Ancient Writers; and the Cenſures I give of them are what I believe to be honeſt and fair. In thoſe that are modern, I have ſometimes ventur'd wholly to

rely upon the Judgment of others; and have very frequently given only the bare Titles of such as I had no opportunity of knowing any farther or better. I must here observe (what I am sorry and loath to do) that, generally speaking, the Oldest Editions of our Law-Books are the best: Whether it be that the Gentlemen of that Profession do not love to trouble themselves with the Niceties of exact Orthography and Criticism, or that the ready Sale of such Works causes the Press to teem them out a little too hastily, I cannot determine.

Most of what is here offer'd to public view and censure had been printed some Months ago, had not the Author been prevail'd with to add a Chapter (more than

than was intended) concerning our *Engliſh* Coins: And he hopes that what is ſaid on that Subject will attone for all the delay he has made. It was thought a little hard that ſo many Authors ſhould have written whole Volumes upon the *Greek* and *Roman* Coins, and not ſo much as one of our own Antiquaries ſhould ever think it worth his while to treat on thoſe of this Nation; that *Strada* and others ſhould be able to preſerve the true Pourtraitures of the *Eaſtern* and *Weſtern* Emperors, taken from their Medals and Money, and yet none attempt to do the like Service for our *Engliſh* Kings; that there ſhould be *La France Metallique*, and that *Spain* ſhould have her *Muſeo de las Medallas*, and yet *England* not have ſo much as a

Man that (till Worthy Mr. *Evelyn* bravely ſhew'd the way) ever pretended to cultivate this Branch of her Antiquities. The general Complaint was, That our antient Money was ſo inartificially coin'd, that hardly a Piece was to be found that gave a King's Face with any tolerable Exactneſs; and that this occaſion'd that Confuſion, when we came to enquire after ſeveral Kings of the ſame Name, as was indeed extremely diſcouraging, if not inſuperable. I dare not pretend to have wholly remov'd this Difficulty; and yet I think I may boldly affirm that I have (in ſome meaſure) leſſen'd it, and given a fair Invitation to the Skillful Reader to try his better Strength upon it. I have given ſome ſort of Account or other of

all

all the Coins (whether in Gold or Silver) which, as far as I could learn, were minted in this Kingdom after the *Norman* Conqueſt, and before the Union of the two Crowns in King *James* the Firſt: And this has ſwell'd that Chapter at ſuch a rate that I was forced to lop off a few leſs neceſſary Branches in others, to preſerve this Third Part from being of too over-grown a Bulk for its Fellows. It will readily be obſerved that here I have had the beſt Aſſiſtance that the Kingdom could afford me, and therefore it muſt be my *Fault* if I have not ſet Matters in as good a Light as they would admit of: Whereas, if in the other Chapters (where I walk ſingle, and without a Guide) I chance ſometimes to miſtake my way, I am the more excuſable.

Before this was finiſh'd, I was deſir'd to bethink my ſelf of another Addition; of a few proper Rules for the Judging at the Age of our ancient Manuſcript Inſtruments and Records. The Limits, to which I am at preſent confin'd, will not ſuffer me to look any farther back than the Middle of the Eleventh Century; and, even for ſuch a Period, I cannot ſay that my Circumſtances would have afforded me Materials enough for a compleat Diſcourſe on this Subject. By what I have of that kind, I ſee 'twould be no eaſy Task to give certain Directions for the diſtinguiſhing the Ages of Deeds and Conveyances, purely by the Hand and Character. I have ſeveral Original Inſtruments, both of the Twelfth and Thirteenth Centuries,

ries, wherein the Cotemporary Scribes write as variouſly as we do now; and it would be hard to aſſign this or the other as a Standard for their common *Æra*. I will not deny but ſome Criticiſms there are in this Art (ſuch as that about the many ways of writing the Letter *i*, befors it came to be pointed, as 'tis now, *&c.*) which are well to be heeded; but, I dare ſay, there are not many in Father *Mabillon*'s whole Treaſury, that will univerſally hold within the Times here treated on. Whilſt Learning and Letters were in a few hands, the Modes of Writing were pretty Uniform: But, as Writers grew Numberleſs, the Alphabets increas'd in proportion, and the Degrees of Painters and Penmen were infinite. The ſureſt way

of

of Judging of the Age of Common Grants is by their Forms, Witneſſes, and Seals; whereof the Reader will find ſome Account in the following Sheets. Charters and *Chancery-Acts* are allowed to have been always written in a Hand different from that of the Ordinary Diſpatches of Private Men: So that the Hiſtory of theſe will not create ſo great a Trouble to a Student in our *Engliſh* Antiquities, and 'tis hoped there will be no want of Directions on this Head. If the Seventh Chapter be not ſufficiently inſtructive in the reſt, I have good Encouragement to believe that the Defect will ſhortly be ſupply'd by Mr. *Wanley*; who has already given his Friends a wonderful *Specimen* of his Extraordinary Qualifications for ſuch a Work,

Work, by his Exact Imitation of ſome old Manuſcripts in the *Cottonian* and King's Libraries. Theſe Copies, with others that he has taken in *Oxford*, he deſigns for the Foundation of a *Res Diplomatica* for *England*: Which, we may juſtly hope, will enable us (at the firſt view) to aſcertain the Age of any tatter'd Scrol we meet with. His Examples will be brought out of ſuch Books as have Dates to teſtifie when they were written: At leaſt, ſome of theſe he endeavours to find out for every Age.

Had the *Oxford*-Catalogue of *MSS.* come early enough to my hand it would have led me to a new ſtore of Pedigrees, Rentals, Inquiſitions, Letters, &c. among *Mr. Dodesworth*'s, *Mr. Wood*'s and Sir *William Glynne*'s Books;

Books; to ſeveral Papers of State, relating to the Affairs of Queen *Elizabeth*'s Reign, in my Lord *Longueville*'s and *Mr. Evelyn*'s Libraries; to the Hiſtory of the Naval Force of *England*, in her time, in that of *Mr. Pepys*; and to a vaſt Number of Reports, Pleadings and other Law-Tracts, amongſt the many choice Volumes of the Learned Biſhop of *Norwich*: But I had weary'd my ſelf with Reviews before I had an Opportunity of looking into that excellent Collection, and therefore I muſt e'en deſire the Reader to make thoſe Additions himſelf. Nor ſhall I now trouble him with any of the Defects in the Second Part; ſince thoſe that have been obſerv'd to me are neither very many, nor of any great Weight.

Some

Some Objections indeed have been raiſ'd againſt particular Characters of Authors and their Writings; wherein thoſe that are concern'd, either for themſelves or their Friends, accuſe me of being too rigorous and even *Unjuſt* in my Cenſures. I may probably live to ſee another Edition of this Work: And then, if theſe Gentlemen ſhall convince me of the Truth of what they alledge, I hope I ſhall abundantly ſatisfy them that I was not under the Influence of any little ſneaking Deſigns, in Flattering Men in Power or Contemning thoſe that are in Affliction. Till this is done, I muſt anſwer them in the words of an Ingenious Perſon, and one that has well conſider'd our Methods and Ways of Judging:

ing : (a) *Men's Principles, Notions and Reliſhes, are ſo different that it is hard to find a Book which pleaſes or diſpleaſes all Men.* Thoſe very Paſſages wherewith ſome are highly Scandaliz'd, are as much applauded by others ; and theſe different and Contradictory Opinions come from ſuch Judges as I truely and equally honour : But they muſt give me leave to affirm that I was as unbyaſs'd and diſintereſted in writeing as they are in ſentenceing ; and that I muſt adhere to my own thoughts, till I ſee better Reaſons (than hitherto have been offer'd) to recede from them. When an Error is diſcover'd to me, I ſhall be more aſham'd to perſiſt in it than to re-

(a) *Mr. Lock*, Pref. to Eſſay of Hum. Underſt.

cant.

cant. The firſt Draught of this *Hiſtorical Library* was intended purely for my own Uſe; it was afterwards drawn up into ſomething of Form for my Diverſion; and 'tis now Publiſh'd, in hopes of its being Serviceable to other Lovers of our *Engliſh* Hiſtories and Antiquities. If it fails of this good End, and brings upon its Author the diſpleaſure of ſome of thoſe he deſign'd to oblige, 'tis not the firſt time that he has been thus miſtaken in his Meaſures: And he has reaſon to thank God that his Conſtitution is of that hardy Frame, that an unlook'd for Frown (where he hoped for a ſmoother Countenance) will not break his heart, nor deter him from *continuing in* what he thinks to be *well-doing*.

THE

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THE

THE English *Hiſtorical Library*.

PART III.

CHAP. I.

Of Proclamations, Orders of the Privy-Council, and other Papers of State, within the Verge of the King's Court, and Palace-Royal.

THE Society of Antiquaries (projected by Sir *Robert Cotton*, Mr. *Camden*, and others) took particular care to make this one of the Rules and (*a*) Statutes of their Community, that all the Proclamations of our Kings and Queens ſhould be exactly (becauſe of the ſcarcity of their Copies) enquir'd after, and preſerv'd in their Library. And 'twas certainly a right Thought in them; ſince 'tis but a lame Account that our Hiſtorians commonly give us of ſuch Matters. They may poſſibly take notice of ſomething Commanded, *Proclamations.*

(*a*) Vid. D. *Th. Smith*, in Vit. D. R *Cotton*, p. 8.

or Prohibited, in this or that Year, by Royal Authority; but they ſeldom give us the Reaſons whereon ſuch publick Edicts were built: And yet theſe (which are always expreſs'd in the formal Inſtrument it ſelf) are beſt worth knowing, and have uſually couch'd in them the chief part of the Story of thoſe times. It was once provided by (*a*) Act of Parliament, that all *Proclamations made by the King's Highneſs, with the Advice of the Honourable* [*Privy*] *Council, ſhould be obey'd and kept, as though they were made by Act of Parliament:* But this, being afterwards judg'd to be of a terrible Conſequence, was preſently repeal'd by another ſubſequent (*b*) Law.

Charters, Charters and Letters-Patents, making Grants of Priviledges, Offices and Penſions, are indeed (at this day) enroll'd in Chancery, and may juſtly be reckon'd amongſt the Records of that Court: But, becauſe they have generally their Riſe at the King's Court of Reſidence, being ſo many ſpecial Acts of his own Royal Bounty,

(*a*) St. 31 Hen. 8. cap. 8. (*b*) 1 Ed. 6. cap. 12.

and

and are therefore particularly Regiſter'd here as well as elſewhere; I cannot think it amiſs, to conſider them in this Chapter. Before the Reign (*a*) of *Richard* the Second, they were all, by Advice of the Privy-Council, expreſs'd by *Hiis Teſtibus*, with a Recital of the Names of ſuch as were preſent. In the firſt Years of that King, the Style was chang'd; and the Concluſion of them ran in this Form, *In cujus rei Teſtimonium has Literas noſtras fieri fecimus patentes: Teſte meipſo.* To diſtinguiſh thoſe that are truly Antient and Genuine, from ſuch as are falſe and Counterfeit, it will be requiſite that one be perfectly well skill'd in the ſeveral Changes that have been made by our Kings in their Seals and Titles. None of 'em ſeal'd with any (*b*) Seal of Arms before *Richard* the Firſt; the Seals of his Predeceſſors bearing only the Pourtraicture of the King, ſitting in a Chair on one ſide, and on Horſeback on the other. This *Richard* ſeal'd with a Seal of two Lyons; becauſe the Conquerour (for *England*) bore two Lyons: But King *John* (in the right of

(*a*) Inſtit. par. 2. p. 78. (*b*) Id. par. 1 cap. 1. 7. a. b.

Aquitaine, the Duke whereof bore one Lyon) was the first that seal'd with three; and all our succeeding Kings have follow'd his Example. *Edward* the Third, in the thirteenth Year of his Reign, Quarter'd the Arms of *France* with his three Lyons; and this Copy has been also carefully written after by all his Successors. The same King, as Founder of the most Noble Order of Knights of the Garter, had his Arms sometimes encircled with their Motto of *Honi Soit*, &c. that of *Dieu et Mon Droit* having formerly been assum'd by *Richard* the First, (*a*) intimating that the Kings of *England* hold their Empire from God alone: But neither of those ever appear'd on the broad Seal before the days of *Henry* the Eighth. There is yet a greater Variety in the Titles of our Kings, than in their Seals. *William* the Conqueror (*b*) commonly Stiled himself *Willielmus Rex*, and sometimes *Willielmus Rex Angloram*. The like did *William Rufus*, who sometimes wrote also *Willielmus Dei Gratia Rex Angloram*. *Henry* the First used both likewise; and

(*a*) See *E. Chamberlane's* Angl. Not. Edit. 16. p. 69
(*b*) Instit. part. 1. cap. 1.

so

ſo did King *Stephen*. *Henry* the Second omitted *Dei Gratia*, and wrote himſelf *Henricus Rex Angliæ, Dux Normanniæ & Aquitaniæ & Comes Angedaviæ*. *Richard* the Firſt uſed the ſame Style with his Father. He was alſo King of *Cyprus* and *Jeruſalem*; but never mention'd either of thoſe Titles. King *John* added *Dominus Hiberniæ*. Mr. *Selden*, I know, affirms, (*a*) That *Henry* the Second himſelf uſed this Title, in purſuance of Pope *Adrian* the Fourth's Bull for the Invaſion of that Kingdom, *Et illius Terræ Populus Te recipiat, & ſicut* DOMINUM *veneretur*: But his own Quotation, out of the Annals of *Ireland*, ſeems to confute this Opinion; telling us, that *Johannes Filius Regis, Dominus Hiberniæ de dono Patris, venit*, &c. *Henry* the Third (in the forty-fourth Year of his Reign) left off *Dux Normanniæ & Comes Andegaviæ*, and wrote himſelf only *Rex Angliæ, Dominus Hiberniæ & Dux Aquitaniæ*. This continued till the thirteenth of *Edward* the Third; who then began to Style himſelf *Edwardus Dei Gratia Rex Angliæ, & Franciæ, & Dominus*

(*a*) Tit. of Hon. p. 37. 38, &c.

Hiberniæ. *Richard* the Second gave *France* the Precedence, his great Seal bearing *Rex Franciæ & Angliæ*: And ſo did (*a*) *Henry* the Fourth. *Henry* the Fifth (in his Eighth Year, and thenceforward during his whole Reign) wrote, *Rex Angliæ, Hæres & Regens Franciæ & Dominus Hiberni*. His Succeſſors reſumed *Edward* the Third's Title: To which *Henry* the Eighth (in the thirteenth Year of his Reign) added *Fidei Defenſor*. This was conferr'd upon him, in his twelfth Year, by Pope *Leo* the Tenth, for the good Services he had done the Papacy in writing againſt *Luther*. The Original of that Book, written with the King's own Hand, is ſtill preſerv'd in the *Vatican* Library; being thus inſcrib'd, *Anglorum Rex Henricus Leoni X. mittit hoc opus & fidei teſtem & Amicitiæ*. It was thought ſerviceable to the *Roman* Cauſe, in the late Reign, to have it tranſlated into *Engliſh*. Notwithſtanding this generally receiv'd Opinion (*b*) ſome have affirm'd, that ſeveral of our Kings uſed the Title of *Defender of the Faith*, long before King

(*a*) *See their Seals in* Speed. (*b*) Chamb. Not. Ed. 16. p. 67.

Henry's

Henry's time; which they pretend to prove from ſundry antient Charters granted to the Univerſity of *Oxford*. The ſame King (in his twenty-ſixth Year) had another Title of *Supremum Caput Eccleſiæ Anglicanæ* confirm'd to him by (*a*) Act of Parliament; and the Law takes Notice, that before that time, he had been ſo *recogniz'd by the Clergy of this Realm in their Convocations*. This Style was uſed by *Edward* the Sixth all his Reign; and by the Lady *Jane Grey*, in the Proclamation that was made of her Right to the Crown, upon that King's Deceaſe. Queen *Mary* alſo call'd her ſelf *Supreme Head* in the like Proclamation of her Right, and on other publick Occaſions in the beginning of her Reign: And having omitted it in her Summons of the Parliament, it was (*b*) much diſputed whether thoſe Writs were Legal. However, within a ſhort time after her coming to the Crown, ſhe wholly omitted that part of the Royal Style; which, after her Marriage, ran thus: *Philip and Mary by the Grace of God, King and Queen of* England *and* France,

(*a*) St. 26 *Hen.* 8. cap. 1. (*b*) *Seld.* Tit. of Hon. p. 59.

Naples, Jeruſalem, *and* Ireland, *Defenders of the Faith, Princes of* Spain *and* Sicily, *Arch-Dukes of* Auſtria, *Dukes of* Milan, Burgundy *and* Brabant, *Counts of* Flasburgh, Flanders, *and* Tyrol. In their fourth and fifth Year they left out *Naples*, but added both *Sicilies*. The Oath of Supremacy was (*a*) ſtrictly enjoyn'd upon Q. *Elizabeth*'s firſt Advancement to the Thrones, and yet ſhe was always ſhy of aſſuming the Title of *Supremum Caput*, contenting her ſelf with that of *E. Dei Gratia Angliæ, Franciæ, & Hiberniæ, Regina, Fidei Defenſor*, &c. The Direction (*b*) of all theſe Letters-Patents, down to the end of *Edward* the Third's Reign, was in theſe Words: *Archiepiſcopis, Epiſcopis Abbatibus, Prioribus, Comitibus, Baronibus*, &c. But *Richard* the Second began a more general and compendious Direction, *Omnibus ad quos præſentes Literæ pervenerint*, which is uſed to this day: Saving that in Charters of Creation of Dignities it ſtill runs, *Archiepiſcopis, Epiſcopis, Ducibus, Marchionibus*, &c. and *his Teſtibus* in the end. The firſt

(*a*) St. 1 Eliz. cap. 1. (*b*) Inſtit. par. 2. p. 1.

of

of our Kings that wrote in the Plural Number (*a*) was King *John*, his Predeceſſors writing in the Singular. They uſed *Ego* in their Grants; and this King, with thoſe that follow'd him, *Nos*. For Antient and Modern Precedents of Characters the Reader may conſult (*b*) *W. Sheppard*'s Treatiſe of Corporations, Fraternities, and Guilds; wherein alſo the Neceſſity, Antiquity, various Kinds, Orders and Government, of Bodies Politick, are accounted for.

I ſhall not pretend to affirm, with a (*c*) certain late Writer, that the Authority of the King's Privy-Council was antiently ſo great, that whatever was reſolv'd on there (and ſeal'd afterwards with the King's Seal) paſs'd immediately into a Law. For this Opinion he quotes Sis *H. Spelman*: But I cannot meet with ſuch a Doctrine in any of his Writings. He mentions, indeed, a (*d*) Conjecture of Sir *W. Raleigh*, that the preſent Conſtitution of our Parliaments was not known before the

Paper-Office.

(*a*) Id. ibid. p. 25. (*b*) 8°. pr. 1 s. (*c*) *Chamberl.* Angl. Not. Ed. 16. par. 2. cap. 1. (*d*) Gloſs. in voce *Parliamentum.*

ſeven-

ſeventh Year of *Henry* the Firſt; at which time he finds the King with the ſole Advice of his Privy-Council, raiſing a conſiderable Sum for the Marriage-Portion of his eldeſt Daughter. 'Tis well known, this will not prove his Point; nor needed he have gone ſo far back (as appears by King *John*'s Charter, and great ſtore of other Evidence) for an Inſtance of this kind. It muſt be allow'd, that from the Council-Board have always iſſued out Occaſional Proclamations, which are binding to the Subject, if not contrary either to Statute or Common-Law. Theſe, with all Diſpatches and Inſtructions for Foreign Miniſters, Letters of Intelligence (and other publick Papers, that are either communicated here, or to the two Secretaries of State) are afterwards tranſmitttd to the *Paper-Office*, wherein they are all diſpoſed by way of Library, in a place of good Security and Convenience, within the King's Royal Palace at *White-Hall*. Here are likewiſe the Credentials of Ambaſſadors, the Letters of Foreign Princes and States, Leagues, Treaties, Memorials, *&c.* Of what great uſe to our Hiſtorian a free Acceſs to this Royal

Treaſury

Treaſury ought to be eſteem'd, appears from the beſt and (*a*) compleateſt Hiſtory this Age has produced; *Cujus operis* (ſays my (*b*) Author) *fundamenta & Statumina fere omnia ex hoc Armario depromebantur.* Beſides theſe Aſſiſtances, the inquiſitive Hiſtorian will here find great variety of Papers relating to the Decrees and Tranſactions of ſeveral of our Antient as well as Modern Palace-Courts.

Star-Chamber.

It were certainly a very vain thing to look for any Records of the Court of *Star-Chamber* higher than the third Year of *Henry* the Seventh, if that (*c*) Statute which declares the Powers of its Judges, were indeed (as ſome have thought) the firſt Original and Foundation of their Juriſdiction: But, in (*d*) *Chambers*'s Caſe, 'twas the Unanimous Opinion of the whole Court of King's-Bench, That *it was not erected by that Statute, but was a Court many years before, and one of the moſt High and Honourable Courts of Juſtice.* Returns of Writs to the King *in Camera*

(*a*) Hiſt. Reform. Eccleſ. Angl. a *G. Burnet.* (*b*) H. *Gale*, in Præfat. ad xx. Script. Vol. 1. p. 7. (*c*) 3 Hen. 7. cap. 1. (*d*) *Croke*'s Rep. Term. Mich. 5. Car. 1.

(which

(which is commonly expounded (a) *Star-Chamber*) are as old as the 28th of *Edward* the Third: And it appears (from a Case in one of the Lord *Dier*'s Mss.) that both the Chief Justices sat in that Court, and that they fined Delinquents very deep, in the Reign of *Henry* the Sixth. It took cognizance of Riots, Extortions, Oppressions, and other grievous Offences, but medled not with Crimes liable to the Pains of Death. It is said to have had but few Sessions, and that for these Reasons. 1. Because those Enormities that were chiefly therein cognizable were rare. 2. *Ne dignitas hujus Curiæ vilesceret.* 3. That the Council might not neglect the Publick Affairs of State, in their too frequent Attendance on private Causes. Their Proceedings were by Informations, Bills, Answers, Replications, Interrogatories, *&c.* all which were filed up, and the Sentences and Decrees were engross'd in a fair Book, with the Names of such Lords and others as were present, and gave their Voices.

(a) Instit. Lib. 4. à p. 60. ad 66.

The

The Judges in the Court of *Chival-ry*, (*a*) were the Lord High Conſtable and Earl Marſhal; the latter whereof was alſo obliged to ſee Execution done. Its Juriſdiction and manner of proceeding in it, is at large accounted for in an old *French* Manuſcript, Entituled, *Modus faciendi Duellum coram Rege*; and may be alſo pretty well learned from the (*b*) Statutes themſelves. The Matters (from beyond the Seas) tryable in this Court, were determinable, (as the Patent (*c*) expreſſes it) *Summarie & de plano, ſine ſtrepitu & figura Judicij.* It was of an antient Date; for ſo ſays the ſame Commiſſion, *Quæ in Curia Conſtabularij ab Antiquo, videlicet tempore Domini* Willielmi *Conqueſtoris quondam* Angliæ, *progenitoris noſtri*, &c. But it has now been very long diſcontinu'd; there having been no conſtant and ſtanding High Conſtable ſince the (*d*) beheading of *Edward* Duke of *Buckingham*. Its Records are chiefly to be had amongſt the Heralds, who were obliged to be Attendants on this Court. Some of thoſe that relate to the Proceed- *Court of* Chivalry.

(*a*) Ibid. cap. 17. (*b*) 13 Ric. 2. cap. 2. & 1 Hen. 4. cap. 14. (*c*) Rot. pat. 7. Ed. 4. apud *J. Seld.* Not. in *Forteſc.* cap. 32. (*d*) A°. 12 Hen. 8.

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ings in the *Marſhalſea* are ſtill in the *Paper-Office*: But the Reader will ſee from the Account given of the Nature and Juriſdictions of this Court, by Sir *Edward Cook* in his (*a*) Reports, that there's little in them to our Hiſtorian's purpoſe.

Embaſſies What is eſpecially conſiderable in this rich Treaſury, is the vaſt Collection we there meet with of Memorials, Inſtructions, Plenipotentiary Powers, *&c.* granted and given (in ſeveral Reigns, and on divers weighty Occaſions) to our Ambaſſadors and Envoys, or Papers of the like kind preſented by the Miniſters of foreign Princes and States reſiding here in *England*. How great light in Hiſtory may be had from theſe, is ſufficiently evident from Sir *D. Digges*'s (*b*) compleat Ambaſſador, wherein we have a pleaſing variety of Letters penn'd by the moſt eminent Statesmen of Queen *Elizabeth*'s Reign, and the beſt account that's any where publick, of what paſs'd on the Subject of that Princeſs's Matching with Fo-

(*a*) Lib. 4. *fol.* 46. 47. Lib. 6. *fol.* 20. 21. & Lib. 10. *fol.* 68, 69, *&c. Le Caſe del Marſhalſea.* (*b*) Fol. Lond. 1655.

reiners.

reiners. The Book was Collected for private Uſe: But, being now Publiſh'd, every Man has liberty to look into the Cabinets of the great *Cecil*, *Smith*, *Walſingham*, &c. The like Entertainment may be had from the Hiſtory of (*a*) Sir *Tho. Randolph*'s Embaſſy to the Emperour of *Ruſſia*, in the Year 1568. wherein the Reader will find the whole Story of the firſt Priviledges that were ever procur'd for our *Engliſh* Merchants in that Country. We have alſo a Diary of (*b*) Sir *Henry Unton*'s in *France*; giving an Account of his Commiſſion, Inſtructions, Letters, *&c.* from *July* 13. 1591. to *June* 12. 1592. He was ſent on a ſecond Embaſſy to the ſaid Court, and is (*c*) reported to have penn'd the Tranſactions of that likewiſe: But where that Journal is to be had, or whether it be not now loſt, we know not. In the Receipt-Office in the *Exchequer*, there's a ſhort Collection of all Leagues and Treaties of Peace, Entercourſes and Marriages with foreign Nations, compiled by the induſtrious (*d*) Antiquary *Ar. Agard*: But this

(*a*) In *Hackluyt*'s Voyages, Vol. 1. (*b*) MS. in Bibl. Bodl. (*c*) Vid. Ath. Oxon. l. 1. p. 246. (*d*) Id. ibid. p. 444.

falls

falls infinitely ſhort of that immenſe Store which Sir *John Cotton*'s Library will afford us of theſe Matters. We have there no leſs than (*a*) Forty three Volumes of Treaties 'twixt the *Engliſh*, *Scots*, and *French*, in a fair and regular Method; beſides (*b*) many more of the like kind in a more looſe and diſpers'd Condition. Nor are the Memoirs of our own Ambaſſadors only of great Uſe in our *Engliſh* Hiſtory; but ſo are likewiſe thoſe of our Neighbour Nations: Thoſe eſpecially wherewith this Kingdom has uſually maintain'd the greateſt Correſpondence in Treaties of Peace and Commerce, as *France* and *Holland*. I have ſeen a Tranſcript of above (*c*) four hundred Volumes of *French* Treaties: So that I have ſometimes wonder'd at an Aſſertion of one of the moſt eminent Hiſtorians of this Age, and one that has had great opportunities of looking into the Archives abroad as well as at home, that (*d*) *it has not been the Practice of that*

(*a*) *Caligula*, B. C. D. E. (*b*) *Julius*, E. 1. 2. 3. F. 6. *Tiberius*, B. 6. 12. *Nero*, B. 1. 2. &c. D. 6. *Galba*, B. C. D. E. *Vitellius*, B. C. 11. 16. 17. *Veſpas.* C. F. *Titus*, A. 3. B. (*c*) In Bibl. *Guelpherbyt.* (*d*) *G. Burn.* Reſl. on *Var.* par. 1. p. 86.

Court

Court to lay up the Negotiations of their Ambaſſadors. And this Remark ſeems the more ſtrange to me, becauſe the ſame Author (in that very (*a*) Treatiſe) had told us of a whole Volume of Authentick Proofs, for his Hiſtory of the Reformation, greater than he had already publiſh'd, in the King of *France*'s Library; *Which* (ſays he) *were the Letters of the* French *Ambaſſadors that were in King* Henry *the Eighth's Court.* The Kings of *France* have often ſat as Arbitrators of Differences in this Kingdom, and have, upon a full Hearing, given their definitive Sentences in the Cauſes brought before them. So much, in ſhort, our Chronicles ſometimes tell us: But what were the Pleadings on both ſides, and on what Reaſons the Judgments were given, they very rarely inform us. Thus (for Example) we are told that *Lewis* the Seventh (*b*) Umpir'd the Matter betwixt our *Henry* the Second, and Archbiſhop *Becket*, then in Exile; and that (*c*) Saint *Lewis* decided the grand Controverſie between *Henry* the Third, and his Barons, in favour of the King. Now,

(*a*) Ibid p. 50. (*b*) M. *Paris*, ad An. 1169. (*c*) Continuator, dict. M. *P.* ad An. 1263.

if we desire to know what Memorials or Arguments were produced in either of these great Cases, and what were the Motives that induced the Royal Arbitrators to frame their Awards in the Form and Fashion that we read of, we must fetch our Informations from *France*; since our own Historians will afford us no manner of Satisfaction in these Points. The like must be said of *Denmark*, *Sweden*, &c, whenever we find our own Affairs mix'd and interwoven with those of other Countries.

Green-Cloth. There is another Repository of Court Records, which is commonly known by the Name of the *Green-Cloth*, so call'd from the (*a*) Covering of the Board, whereat the great Officers sit and give Audience. In this Office (which by some of our Writers is call'd *Domus Compotus Hospitij Regis*) are not only preserv'd the Accounts of the King's Household Expences, but you have also here such prudent Orders as (from time to time) have been made by the Lord Steward, Chamberlain, Comptroler, &c. for the more

(*a*) Vib. Instit. Lib. 4. cap. 19.

decent

decent and regular Behaviour of the Inferior Servants.] They have (*a*) a Power of Trying and Determining all Treaſons and Conſpiracies within the Verge of the Court, againſt the King's Royal Perſon, or any of the Members of his Privy-Council, as alſo all Murders, Manſlaughter, and Bloodſhed, within the (*b*) Limits and Bounds of the King's Palace, or within two hundred Yards of the Door, or Gate of any Houſe where His Majeſty ſhall perſonally reſide. Here likewiſe (and not in Chancery) were commonly enroll'd all Letters and Writings concerning ſuch Matters of State as were not fit to be made vulgar.

Prerogatives.

In the concluſion of this Chapter, I think, we ought to take ſome notice of thoſe that have ventur'd to Treat upon the Rights of our Monarchs, and the Extent or Plenitude of their Regal Power: And theſe indeed have been very many. *Phil. Hunton*, a Non-conformiſt Miniſter, publiſh'd the moſt learned (*c*) Treatiſe on Monarchy, of any of the Writers of his Party, in the

(*a*) St. 3. Hen. 7. cap. 14. (*b*) St. 33. Hen. 8. cap. 12. (*c*) 4°. *Lond.* 1643. 1680. 1689.

former part whereof he enquires into the Nature of Monarchy in general; and in the latter conſiders the Frame and Conſtitution of that in this Kingdom. This Author peremptorily aſſerts that the Sovereignty of *England* is in the three Eſtates of King, Lords, and Commons; which Propoſition was condemn'd as Heterodox by the Univerſity (*a*) of *Oxford*, in their Convocation, and the Book it ſelf publickly burn'd. In Anſwer to this, Sir *Robert Filmer* publiſh'd his (*b*) *Anarchy of a limited and mix'd Monarchy*. 'Tis likely that *Hunton* had met with ſome more early Antagoniſt; ſince, before the Appearance of Sir *Robert*'s Book, he printed a (*c*) Vindication of his Treatiſe of Monarchy. Another of the moſt virulent Oppoſers of Kingly Government, and Patrons of Democracy, was *James Harrington*, ſometime of the Bed-Chamber to King *Charles* the Firſt: Who, though he was a zealous and affectionate Admirer of his Royal Maſter's Perſonal Endowments, never heartily reverenc'd his Regal Office. When that was ſuppos'd to be brought

(*a*) *July*, 21. 1683. (*b*) 4°. Lond. 1646. & 8°. Ibid. 1652. 79. (*c*) 4° Lond. 1644.

to

to a final Period, he wrote his (*a*) *Common-Wealth of* Oceana, wherein he propoſes a new *Utopian* Model of Government, by ballotting of Senators, *&c.* In Anſwer to this came forth *Matt.* (*b*) *Wren*'s *Conſiderations*, &c. reflecting on the firſt part of *Harrington*'s Preliminaries. To theſe was prefix'd a Letter to Dr. *Wilkins*, (then Warden of *Wadham* Colledge) deſiring his Thoughts of the Controverſie; which gave occaſion to *Harrington* to reflect a little ſeverely, upon that Club of *Virtuoſi* (which then uſually met at the Warden's Lodgings, and were the firſt Seedlings of the now famous Royal Society) as if they laid their Heads together for the compoſure of that Anſwer. This he did in his (*c*) *Prerogative of Popular Government*, in the former part whereof he enlarges the firſt Preliminary of *Oceana*, and endeavours to vindicate it from all ſuch *Miſtakes or Slanders as have been alledged againſt* it under the Notion of Objections. To this *Wren* reply'd in his (*d*) *Monarchy aſſerted*, wherein are given the true States of both Monarchical and Popu-

(*a*) Fol. Lond. 1656. (*b*) 8°. Lond. 1657. (*c*) 4°. Lond. 1658. (*d*) 8°. Lond. 1659.

lar Government, in defence of the *Conſiderations*. Hereupon, the Democratick immediately publiſh'd a Comical Repartee, under the Title of (*a*) *Politicaſter*: And ſo this mighty Controverſie ended in a Quible. Againſt the *Oceana* appear'd alſo Mr. *Baxter*; who, to convince the Author of that Book that he was a Politician, did alſo afterwards oblige the World with his (*b*) *Holy Common-wealth*: A piece which needs have no more ſaid of it, than that it fell under the ſame Condemnation with *P. Hunton*'s before-mention'd. He had ſome other Opponents of leſs Note. Honeſt *Fabian Philips* has furniſh'd us with a ſufficient ſtock of Anſwers to whatever ſhall be ſcribled by the Writers of that Gang, in his (*c*) *Inveſtigatio Jurum Antiquorum*, &c. wherein our Eſtabliſh'd Government is vindicated from Popular and Republican Principles and Miſtakes, with a reſpect to the Laws of God, Man, Nature, and Nations. 'Tis obſervable, that moſt of thoſe doughty Combatants, that have hitherto engaged the *Engliſh* Monarchy, have borrow'd their

(*a*) 4°. Lond. 1659. (*b*) 8°. Lond. 1659. (*c*) Fol. Lond. 1686.

chief

chief Artillery from ſome ſelect Paſſages in *Glanvil*, *Bracton*, *Fleta*, &c. whereas they might have carry'd their Authorities much higher. In thoſe Laws which are ſaid to have been of King *Edward* the Confeſſor's enacting, and confirm'd by *William* the Conquerour, they have theſe Strictures, (*a*) *Debet Rex omnia rite facere in Regno, & per judicium Procerum regni. Debet enim Jus & Juſtitia magis regnare in regno, quam voluntas prava. Lex eſt ſemper quod Jus facit*, &c. This indeed is part of the younger of the two Copies of thoſe Laws, which Mr. *Selden* perus'd: But even that appears to have been penn'd in or ſoon after the Reign of *William Rufus*, which is before the time of the Authors uſually quoted. Let it only be further obſerv'd, that (in this very Chapter, which ſeems to have been the Original whence this Doctrine is Copy'd) 'tis affirm'd, that theſe Bounds were ſet by the *Pope*, and not by the *People*.

The great Reſpect which has of late been paid to *Nath. Bacon*'s (*b*) Hiſto- *Bacon.*

(*a*) LL. *Guil.* 1. cap. 17. (*b*) Firſt part, from the firſt Times to the Reign of *Ed.* 3. 4°. Lond. 1647. Second part, to the end of Q. *Eliz.* Ibid, 4°. 1651. Both Reprinted in Fol. Lond. 1695.

rical Diſcourſe of the Uniformity of the Government of *England*, will oblige us to conſider that Author apart from the reſt. There are ſeveral Witty, Political and Moral, Reflections in his Book; which diſcover a peculiar Art in drawing very notable and weighty Concluſions from weak and Airy Premiſes. His Remarks on the Clergy, upon all occaſions, are ſo full of Bitterneſs and Invective, as might have become Mr. *Selden* himſelf, and are an evident Argument of the Author's having a mind to Ape even the very Paſſions of that angry Great Man. Some favourable Expreſſions towards Monarchy drop from him unawares; as when he ſpeaks of the Duke of *Normandy*'s being a ſcourge to the People for their *Cauſeleſs deſerting of the Royal Stem*, &c. But, whenever this happens, he's manifeſtly out of his way. His main deſign was to blacken all our Kings, and to ſhew that they had nothing lovely in them but what was deriv'd from the Favour and Careſſes of the People, as will appear from the following Abſtract of the whole Work, which ſhall be given in his own Words. *The*

Britiſh

Britiſh *People held the Helm of Government in their own Hands, till the* Romans *made them a Province, and ſubjected them to Kings. The* Saxons *were alſo a Free People, and a Law unto themſelves: ſaving only that theſe, as well as the* Britains, *paid a profound Reſpect and Reverence to their Prieſts. The* Conqueror *ſtoop'd under the Law of a* Saxon *King, and became a King by Leave, wiſely foreſeeing, that a Title gotten by Election is more certain than that which is gotten by Power.* William Rufus *was happy in the fear or favour of the People; for he had nothing elſe to make room for his riſing.* Henry *the Firſt bound himſelf, by Capitulation, to be Juſt, that he might be Great; and the People to ſubmit to Juſtice, that they might be Free. K.* Stephen *was a Vapour mounted up by the Clergy; toſs'd by Tempeſts for a time, and at length falling.* Henry *the Second's Title was by Compact made between the Lords, King* Stephen, *and himſelf; all being then ready to try the Right by the Sword to that to which none of them had any right at all (at that time) but by the favour of the People.* Richard *the Firſt's Entrance was upon an Election made in*

his

his Father's time. John *was chosen hand over head, and so ruled: though the King must be thought sober, the Man was mad.* Henry *the Third was the first Precedent of Conscience, in point of Succession by Inheritance; the People closing about this Spark, in hopes it might bring forth a flame whereby to warm themselves in stormy weather.* Edward *the first contended for Arbitrary Power in* England: *But our good old Enemies (the* Scots) *by Divine Providence suddenly cross'd his way.* Edward *the Second was made a Monument of God's Revenge upon inordinate Desires in a King, and of the* English *People enraged: Not long surviving his Demise, he dy'd a Death meet to be for ever blotted out of the thoughts of all Subjects, but to be had in everlasting remembrance of all Kings.* Edward *the third, after fifty years Reign, dy'd in his Minority, under the Rule of a Woman of none of the best* Fame. Richard *the Second retain'd a tincture of the light Inconstancy of his Mother, and the Luxuriousness of his great Grandfather; and, running his* [Ed. II's] *Course, came to his End.* Henry *the fourth was an unhappy confident Man, that durst undertake more than he would, did more than he ought, and was*

suc-

ceſsful in what he did; yet never attained his End, to be ſure of his Crown and Quiet of Mind. Henry *the fifth was bold enough to out-face ſmall Doubts in point of Succeſſion: for he could (for a need) out-face common Civility it ſelf.* Henry *the Sixth enter'd the* Throne *in his Mother's Lap. A ſad Preſage of what follow'd; for many Men think that he was in a Lap all his Days.* Edward *the fourth came in by the People, though he endeavour'd to ſupport himſelf by* Foreign *Dependencies.* Edward *the fifth was the* Materia Prima *of a King; and liv'd only long enough to be enroll'd amongſt the reſt.* Richard *the third proceeded from a Protector to an Uſurper, and thence to a Tyrant; a Scourge to the whole Nation, eſpecially the Nobility; an Inſtrument of God's Revenge upon himſelf; a Man made up of Clay and Blood; living not loved, and dying unlamented.* Henry *the Seventh was a Cunning Man, rather than a Wiſe* Engliſh *King. And, though he dy'd Rich, yet is he ſince grown into Debt to the Penmen of his Story, that by their own Excellency have render'd him a better King than he was.* Henry *the Eighth knew neither faithful Servant, Counſellor nor Wife; but ſtruck at all*

that

that ſtood in his way. Edward *the Sixth was every way tender; born and ſupported by extraordinary Means, which could never make his Days many, or his Reign long.* Q. Mary *liv'd an uncomfortable Life; ſhaped a bloody Reign, and had but a dim Concluſion.* Q Elizabeth *was begotten in a heat againſt* Rome; *wherein alſo ſhe was born and train'd up by her* Father *and* Brother's *Order, and ſaw enough in his Siſter's Courſe to confirm her therein.* This is the Summ and Subſtance of this admir'd Book; which (with its Author) I ſhall leave to the Reader's due correction, and proceed.

CHAP.

CHAP. II

Of Acts, Ordinances, Journals, &c. of the Two Houſes of Parliament.

A Collection of the Laws before *Magna Charta* was made by Sir *H. Spelman*; and is now amongſt the many choice MSS. in *Bodley's* Library. It bears the Title of (a) *Codex Legum Veterum & Statutorum Regni* Angliæ, *quæ ab ingreſſu* Gulielmi, *uſq; ad Annum Nonum* Henrici *Tertii edita ſunt; hoc eſt, ante Primum Statutum omnium Impreſſorum in Libris Juridicis.* All theſe have been a good while ſcatter'd and diſpers'd, in our Printed Books. We have a pretendedly exact Copy of the Conquerour's in their Original *French* Language, together with a *Latine* Tranſlation, firſt publiſhed by Mr. *Sel-*

Laws before M. Charta.

(a) Vid. Præfat. ad Reliq. *Spelmann.*

den

den (*b*); and afterwards by (*c*) Sir *Roger Twiſden* and Sir *H. Spelman* (*d*); who only tranſcrib'd them from the former. The Old Chronicle of *Litchfield* (out of which *Selden* had one of his Copies) gives this account of the firſt enacting of theſe Laws. *Anno* Guilielmus *Regni ſui quarto apud* Londonias *Conſilio Baronum ſuorum fecit ſummoniri per Univerſos* Angliæ *Comitatus omnes Nobiles, Sapientes, & ſua Lege eruditos, ut eorum Leges & Conſuetudines audiret. Et licet idem Rex* Willielmus *Leges* Norfolkiæ & Suffolkiæ, Grantbrigiæ & Deiræ (*ubi quondam Maxima pars* Danorum & Norwegienſium *inhabitabant*) *prius magis approbaverat, & eas per totum regnum obſervari præceperat, pro eo quod omnes Anteceſſores eius, & fere omnes Barones* Normanniæ, Norwegenſes *extitiſſent, & quod de* Norwagia *olim veniſſent; poſtea, ad preces Communitatis* Anglorum, *Rex adquievit; qui deprecati ſunt quatenus permitteret ſibi Leges Proprias & Conſuetudines antiquas habere, in quibus vixerant Patres eorum,*

(*b*) In Spicileg. ad *Eadmer.* (*c*) Addit. ad *Guil. Lambardi* Archaion. ab *Abr. Whelco* Edit. 1644. p. 159, &c. (*d*) Concil. *Brit.* Vol. 2.

&

& *ipſi in eis nati* & *nutriti ſunt, ſcilicet Leges ſancti* R. Edwardi, &c.

In this Chronicle, as likewiſe in the *French* Tranſcript which *Ingulphus* brought to *Croyland* in the laſt Year of that King's Reign, the Number of theſe Laws are Fifty ; and they contain ſeveral *Norman* and *Feudal* Cuſtoms, which could not be borrow'd from any Conſtitutions purely *Saxon*. To theſe there are added one and twenty other Decrees, which (in the *Red Book* of the Exchequer) are given by way of Charter, the Form obſerv'd by the Conqueror's immediate Succeſſors; the Thirteenth whereof is in theſe Words: *Hoc quoq; præcipimus, ut omnes habeant & teneant Leges* Edwardi *Regis in omnibus rebus, adauctis iis quas Conſtituimus ad Utilitatem Anglorum.* This was well Noted by *Gervaſe* of *Tilbury*, who (in his Dialogue (a) *De Scaccario*) gives this very account of 'em: *Quaſdam reprobavit, quaſdam autem approbans, illis Trans-Marinas Neuſtriæ Leges, quæ ad Regni pacem tuendam efficaciſſimæ videbantur, adjecit.* Beſides theſe, Mr. *Selden* has like-

(a) Vid. I. *Seld.* Notas ad *Forteſc.* cap. 17.

wiſe

wiſe collected ſome other ſcatter'd Edicts of his out of our *Engliſh* Hiſtorians, and publiſh'd them together in his (*b*) *Epinomis*: A Treatiſe wherein he has done the ſame thing for his ſix immediate Succeſſors, in ſo many ſeveral Chapters, and was intended by its learned Author for a Supplimentary Introduction to the Books of our Statute-Laws. We have no perfect Laws of *William* the Second's Eſtabliſhment; and thoſe broken Fragments which the *Epinomis* brings out of *Malmesbury* and *Polydore Vergil* are preſum'd only, but not prov'd, to be of his enacting. They that expound *Polydore's* words of (*c*) *Vectigal Unius Anni*, to prove that this King ſet up the legal claim of Firſt-Fruits, upon the Vacancies of Biſhopricks and Monaſteries, are manifeſtly miſtaken; ſince the Hiſtorian, in that place, intimates only that the Temporalties of ſuch Vacant Dignities might as well be enjoy'd by the King, as the Juriſdiction by the Archbiſhop of the Province. Some of the Interpolations in the latter copy of his Father's Laws appear to have

(*b*) Fol. *Lond.* 1683. cap. 4. (*c*) Hiſt. *Angl.* lib. 10. p. 168.

been

been compos'd even after the Demiſe of this King, and others look ſomewhat like the Edicts of this Reign: But, the main of thoſe Additions being taken out of the *Saxon* Laws, as well as the ſounder and more antient part of the Text it ſelf, 'tis uncertain whether of the *Williams* we ought to aſcribe them to, or whether indeed they belong rightly to either of them. Thoſe that bear (*a*) the Name of *Henry* the Firſt, have been publiſh'd out of three ſeveral Manuſcripts) by *Sir Roger Twiſden*, together with thoſe of his Father already mention'd: But, as the learned Publiſher himſelf (*b*) obſerves, they have had ſome late hand in Modelling them into the Form they now carry. They expreſsly quote Pope *Gregory*'s Decretal; which was not compiled by *Gratian* till near twenty years after the death of this King. There were two other *MS. Copies*, in the Libraries of *Sir R. Cotton* and *Sir H. Spelman*, which ſeem not to have come to *Sir Roger's* Knowledge; tho', 'tis ſufficiently (*c*) plain, they might have been of

(*a*) Vid. Tit. of Hon. p. 518. (*b*) Not. ad p. 179. (*c*) Vid. *Spelm.* Gloſs. in Vocc. *Flemenfirma*, *Hanteſia*, *Herthobertreingrevet*, *Lafordſæic* & *Pudhebec*.

great use to him. I do not think that ever these would have help'd us to a truely correct Edition of them, since they are likewise acknowledged to be miserably corrupted; but they would certainly have help'd to make the Jumble a little less confused than now it appears to be. *Meric Casaubon* (*a*) assures us that *Mr. Somner* took good pains with the Edition of these Laws, having written upon it *Animadversiones uberes et doctas, cum Glossario utilissimo.* I guess the larger of those two Glossaries, which we now have in the *Appendix* to them, might be of his Composure; the other Antient aud Imperfect one being all that *Sir Roger* himself pretends to have given us: Though a (*b*) learned Person will not be perswaded but there must be somewhere a more accurate, and much larger, work of his on this Subject, which has not yet seen the Light. The matter of these Laws are chiefly on the Crown-Side, the Regulation of the Common-Pleas being the Business of some following Reigns. That King *Stephen* forbad the Usage of the Civil Law is

(*a*) De quat. Ling. p. 141. (*b*) *W. Kennet*, in Vit. *Somneri*, p. 12.

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tteſted by the Famous Frier (*c*) *Bacon*; who gives this account of the matter, *Rex quidam* Angliæ Stephanus, *allatis Legibus* Italiæ *in* Angliam, *publico Edicto prohibuit ne ab aliquo retinerentur*: And *J. Salisburienſis* (a little more particularly) tells us that theſe were Laws (*d*) *quas* in Britanniam *domus Venerabilis Patris* Theobaldi Britanniarum *Primatis aſciverat*. But neither of theſe ſpeak any thing of his giving his Subjects any others in their ſtead. *Henry* the ſecond contented himſelf with the Confirmation of the Laws of *Edward* the Confeſſor and *William* the Firſt; which he is (*e*) ſaid to have done by the ſpecial Advice of his chief Juſtice *R. Glanvil.*

M. Charta.

In the Front of all our Printed Statutes we have always the *Great Charter*; which (being frequently granted and confirm'd by Aſſent and Authority of Parliament) is by (*f*) *Littleton* rightly call'd *L'Eſtatute de Magna Charta.* Others have ſtyled it *Charta Libertatum Regni, Communis Libertas* and *Le Char-*

(*c*) In Compend. Theolog. cit. in Not. ad *Forteſc.* cap. 23. (*d*) De Nugis Curial. lib. 8. cap. 22.
(*e*) *R. Hoveden.* Hiſt. Hen. 2. p. 600. (*f*) *Tenures*, lib. 2. cap. 4. §. 108.

tre des Franchiſes; and the reaſon aſ-
ſign'd for its being Named *Magna*, is be-
cauſe of the (*a*) *great weightineſs and*
weighty greatneſs of the matter contain'd
in it. It was firſt granted in Form by
King (*b*) *John*, and enlarg'd by (*c*)
Henry the Third; who afterwards (at
the Inſtigation of his chief Juſtice *Hu-*
bert de Burgo) cancell'd it, upon Pre-
tence that he was under Age when he
granted it. It has ſince been confirm'd
by (*d*) many Acts of Parliament; and
declared by our Judges to be the chief
part of the Common-Law of *England*:
And we are told, that the ſaid *Hubert*,
together with the two Infamous *Spencers*,
in *Edward* the Second's Time, came to an
unhappy end by continuing his raſh
counſels (*e*) *En contre la forma de la*
grand Chartre. 'Tis in this latter (of
Hen. 3.) that the various feudal
cuſtoms and ſervices of Wardſhip,
Marriage, &c. are firſt drawn into a
formal Law: Which probably gave
(*f*) occaſion to *R. Higden* to aſſert that
this ſhare of the Common-Law was

(*a*) *Coke*'s Inſtit. lib. 2. cap. 3. (*b*) Anno Regni, 1
(*c*) Anno R. 9. (*d*) 25. Ed. 1. and 31. Acts following
(*e*) Proem. ad Inſtit. par. 2. (*f*) Vid. Reliq. Spelm.
p. 30.

In

Introduced by that King. The (*a*) Second Part of *Sir Ed. Coke*'s Inſtitutes gives us *Magna Charta*, and ſeveral other ſelect Statutes in the Original Languages wherein they were firſt enacted, much more correctly then we have 'em in any other Printed Copies. Upon theſe he continually gives us his own Commentaries, very full of excellent Learning; wherein he ſhews how the Common-Law ſtood before the making of ſuch Statutes, whether they are Introductory of any New Law, or only Declaratory of the old; what were the Cauſes and Ends of their being enacted, what branches of 'em are now alter'd or repeal'd, &c. *Sir Hen. Spelman* (*b*) has alſo an Elaborate Diſcourſe upon this Famous Charter; which he is pleas'd to call *Auguſtiſſimum Libertatum Anglicarum Diploma et ſacra Anchora.* Some have imagin'd, that this, and the like Expreſſions on that Head, with ſome of the ſame Face that follow elſewhere, might occaſion the delay of (*c*) Publiſhing the Second Part of his Gloſſary; the Firſt being ſent to the

(*a*) Fit. *Lond.* 1662. &c. (*b*) In Gloſs. Voce *Magna Charta.* (*c*) See his Life by *Mr. Gibſon*, p. 6.

Preſs at a time (*a*) when Prerogative ran high, and the Liberties of the People were not to be mentioned. In the whole Hiſtory which he gives us of its Original Growth and Perfection, he has not obſerv'd (what is noted by another (*b*) Learned Perſon) that we have not one true Copy of this ineſtimable Peice; notwithſtanding all the Blood that has been ſhed in its defence. In the Common Prints, and even in Sir *Edward Coke*'s own Copy, the Witneſſes are *B. Cantuarienſi Archiepiſcopo*, *F. Londinenſi Epiſcopo*, &c. *Anno Regni noſtri nono.* Whereas 'tis certain that *Boniface* was not Archbiſhop of *Canterbury* before the 27*th* of *Henry* the Third; nor was there any ſuch Man as *E.* Biſhop of *London*, all the while that he was Primate. That moſt of our Copies are corrupted and abus'd, is what I can eaſily believe; but that there ſhould not be ſo much as one found one in the whole Pack, looks like an Aſſertion too bold and general. Copies were ſent to the ſeveral (*c*) Archbiſhops and Biſhops of the Realm, to be preſerv'd in their Rege-

(*a*) *A. D.* 1626. (*b*) D. *Th. Gale*, Præfat. ad *Angl.* Script, p. 5. (*c*) Proem. ad Inſtit. par. 2.

ſtries;

ſtries; and there was hardly a Monaſtery in the Kingdom without one or more of them. 'Tis hard to affirm, that all theſe were blunder'd and ſpoyl'd; tho 'tis certain their Copyers were extremely careleſs in giving the proper Names of Witneſſes, &c. In a very old one that has fallen into my hands, King *Henry*'s Charter ends *Hiis Teſtibus, Bonefacio Cant. Archiep.* &c. *Dat. apud Weſtmon.* IX. *Die* Februar. *anno regni noſtri nono.* And King *Edward*'s Confirmation does alſo conclude very differently from what we have in the Print, *Hiis Teſt. Roberto Cantuar. Archiep.* &c. *Datum per manum noſtrum apud* Weſtmon. xviii. *die* Maii, *Anno Regni noſtri* xxviii. In ſeveral Manuſcripts, and in *Tottel*'s Edition in Print, the Cuſtoms of *Kent* are annex'd; being certain Priviledges and Tenures peculiar to that Country. The Epilogue of 'em ſays they are ſuch (*que furent devaunt le Conqueſt, een le Conqueſt*) as were in uſe before and at the Conqueſt; and Mr. *Lambard* (*a*) met with one Copy of 'em which ſays they were *allowes en Eire* John de Berwike, *e ſes Compagnions*,

(*a*) Peramb. of *Kent.* Edit. 1596. p. 570.

Juſtices en Eire en Kent, *le* 21. *an le Roy* Ed. *Fitz le Roy* Henrie. The ſame Learned Antiquary has given us an Explanatory Comment on theſe Cuſtoms, wherein ſeveral Inſtances are given of the difference of ancient *Gavelkind* from Common-Law-Tenures.

Printed Statutes. Our Acts of Parliament give often ſuch fair Hints of the Humors moſt prevailing at the Time of their being enacted, as that many parts of our Hiſtory may be recover'd from them; eſpecially if compar'd with the Writers, either in Divinity or Morality, about the ſame Date. Thus, for Example, the (*a*) Statute againſt Multiplication of Metals, diſcovers ſomewhat of the Ruinous Fancy (which had then ſeiz'd moſt of our Nobility) of trying Chymical Concluſions for the Attainment of the Philoſopher's Stone; and he that reads *Chaucer*'s Tale of the Canon's Yeoman, penn'd about the ſame time, will have a farther View of the Faſhionable Vanity of thoſe Days. Thus likewiſe, from the Statute of (*b*) *Marlbridge*, ſome

(*a*) 5. *Hen.* 4. cap. 4. (*b*) *A. D.* 1267. 52. *Hen.* 3.

have

have taken the great *Epoche* of our preſent *Engliſh* Government; (*a*) affirming that 'twas then that (to uſe *Livy*'s Expreſſion) the *Imperia Legum* began to prevail in our Land, the Confuſions of Abſolute and Arbitrary Tyranny being utterly aboliſh'd and laid aſide. Amongſt our Printed Statute-Books, the moſt ancient ones are of Chief Uſe and Authority; giving a Juſt Account of ſome Laws which (being now loſt from among the Records) had otherwiſe periſh'd, and very often a more Faithful one than the Books of later Editions. For Inſtance, The Statute (*b*) of Felony for Stealing a Falcon (in the laſt Editions) has the words *Laneret, or any other Hawk*; and ſome Old Copies in Manuſcript have *Lanyret, Auſtor ou autor Falcon*: Whereas the true Reading is, that of the Eldeſt Prints, *Lanyret ou auter Falcon*; omitting the the Word *Auſtor* (or Gos-hawk) which the Enactors of that Law never thought of, and not uſing ſo general a Term as any *other Hawk*, which likewiſe goes beyond their Intention. To enlarge

(*a*) Vid, D R. *Twiſden*, Præfat. ad L. L. *Wil.* & *Hen.* 1. p. 158. (*b*) 37. *Ed.* 3. cap. 9.

the

the Stock of their Laws, in Times wherein the Remains are not numerous, the firſt Compilers of theſe Books have amaſs'd Proclamations, Writs, *&c.* all under the General Name of *Laws*. Thus the Statute, as they call it, of (*a*) *Circumſpecte Agatis*, is more properly a Writ to the Judges: The like may be ſaid of that (*b*) of *Carliſle*, and that (*c*) of *Fines* is more like a Rule of Court, that (*d*) of Wards and Relief no more than a Marginal Note, on ſome old Book of Entries, *&c.* *R. Pynſon*'s (*e*) Edition of the *Antiqua Statuta* is acknowledged to come after two or three former Impreſſions, and yet what a wretched Confuſion runs through the whole Work? Several of the Conſtitutions of *Henry* the Third (as *De Anno Biſſextili*, *Aſſiſa Panis*, &c.) are jumbled and miſplaced, ſo as to follow after others of *Edward* the Firſt's Enacting; and ſeveral of *Edward* the Second's (*De Prerogativa Regis*, and *Modus faciendi Hominium*) are likewiſe follow'd by ſome of that King's Fathers and Grandfathers. The putting of

(*a*) 13 *Ed.* 1. (*b*) 15 *Ed.* 2. (*c*) 18 *Ed.* 1. (*d*) 28. *Ed.* 1. (*e*) 12° *Lond.* 1527.

Margi-

Marginal Notes to the Statutes at large, was firſt begun by *Will. Raſtal*, who (*a*) Collected all in force from *Magn aCharta* to the fourth year of *Philip* and *Mary*; and his Continuer (*b*) carry'd them to the forty third of Queen *Elizabeth*. Soon after, *Ferd. Pulton* publiſh'd his Collection (*c*) of Statutes, Repeal'd as well as un repeal'd; and (*d*) afterwards gave the ſame more ſerviceably (with good uſeful Marginal Notes) down to the Sixteenth of K. *James* the Firſt. Theſe have ſince been continu'd by *Manby*, *Keeble*, &c, *Pulton*'s comparing of the Statutes of the firſt ten Kings, (from the Ninth Year of *Henry* the Third, to the Second of *Richard* the Third) with the Original Records in *Latine*, or *French*, his examining of the reſt, his References, Abſtracts of private Acts, *&c.* are Performances which have highly obliged the Publick; but are ſtill capable of farther Improvements than our late Publiſhers have thought fit to beſtow on them. In comparing theſe Editions with the MS. Rolls of Parliament, we may obſerve, 1. Divers Act

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(*a*) Fol. *Lond.* 1559 (*b*) Fol. Ibid. 1603. (*c*) Fol. *Lond.* 1608. (*d*) Fol. Ibid. 1618.

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in Print that are not in the Roll. 2. Many in the Rolls never yet Printed. 3. Divers Clauſes omitted in the Print, which occur in the Rolls. 4. Many conſiderable Variations, eſpecially in qualifying bitter Reflections on the Pope's Uſurpations. 5. Some Statutes pretended to be Enacted, and afterwatds diſaffirm'd, and yet Printed. 6. Whole Parliaments omitted, wherein were many notable Matters Tranſacted. 7. Whole Parliaments Repeal'd and made void by Subſequents. Theſe Differences were long ſince (a) obſerv'd, and a great many Inſtances given upon every particular Head, and yet I do not find that care is taken to have them rectify'd. The common placing of our Statute Laws is certainly of great and neceſſary Uſe; eſpecially ſince they grew up to that vaſt bulk wherein we now have them. But when theſe Methodical Abſtracts are publiſh'd, 'tis requiſite that a more than ordinary care be taken in examining the Numeral Quotations, and ſhort References, otherwiſe the Miſtakes, into which the Reader may be led, are unſpeakable

(a) Inſtit. Par. 4. cap. 1. p. 50, &c.

and

and endleſs. The firſt (*a*) Abridgement of this kind that I have ſeen, was made by *F. Pulton*; who drew it up in an Alphabetical order, and (intending it only for the Service of Juſtices of Peace) took notice only of Penal Statutes. He was follow'd and enlarg'd by *Edm. Wingate*; whoſe Book has been often very careleſly Reprinted. In the laſt Impreſſion (*b*) the falſe References are ſaid to be rectify'd; and the whole ſo accurately revis'd, that there's no hazard of a Man's being miſled and impos'd on.

Rolls of Parliament.

Our Printed Laws, it appears, will not afford an Hiſtorian full ſatisfaction in the Particulars they treat on; and therefore Truth as well as Curioſity will neceſſarily invite him to conſult the Original Records, whereof theſe are often very faulty Copies. Before the uſe of Printing, and till the Reign of *Henry* the Seventh, our Statutes were all engroſs'd in Parchment, and (by vertue of the King's Writ to that purpoſe) proclaim'd openly in every Coun-

(*a*) 4°. *Lond.* by *Chr. Barker* the Queen's Printer.
(*b*) 8°. *Lond.* 1689.

ty:

ty: A Method which was undoubtedly of excellent Advantage to the Subject, and what ſome of our (*a*) greateſt Men of Law have thought worthy to be reſtor'd. About the time that this Advice was offer'd, 'twas (*b*) obſerv'd, that we had then had near three hundred Seſſions of Parliament ſince the Conqueſt, in each whereof divers Acts had been paſs'd; and that of theſe a conſiderable Number had never yet appear'd in Print. The Reader's Zeal will perhaps be the better quicken'd, if we give him one or two of the many Inſtances that might be afforded him in this Particular. Know therefore, that there is (*c*) one dormant Statute of this kind, wherein ſuch Eccleſiaſtical Livings as paid Tenths to the Pope, were exempted from paying them to the King; with a Proviſo, that the acquir'd Poſſeſſions afterwards ſhould be chargeable to the King, and not to the Pope. There's (*d*) another Act in the Rolls againſt Corruption in Judges and other of the King's Officers; which was omitted by thoſe that made Collections for the Pub-

(*a*) Inſtit. Par. 2. p. 526. (*b*) Inſtit. par. 1. Lib 2. cap. 10. (*c*) 18 *Ed.* 3. (*d*) 11. *Hen.* 4.

lick

lick, becauſe they found on its Margin *Reſpectuatur per Dominum Principem & Concilium.* This Statute (as appears from (*a*) Sir *Edward Coke*'s publiſh'd Copy of it) has its *Le Roy le voet*: And the Marginal Note is only one of the many Frollicks of the Prince (afterwards *Henry* the Fifth) who alſo put a like *Reſpectuatur* upon another Act of the ſame Parliament touching the Regulation of Attorneys. In theſe Rolls we have likewiſe a great many Deciſions of difficult Points in Law, which were frequently, in former times, referr'd to the Determination of this Supreme Court by the Inferiour Ones of both Benches. In theſe, as in our Modern Reports, we have not only the final Reſolution and Judgment of the Court, but alſo the Reaſons and Cauſes of the ſame. An exact Abridgment of as many of the Parliamentary Records as were to be had in the Tower of *London*, (from the Reign of *Edward* the Second, to that of *Richard* the Third) was made by Sir *Robert Cotton*, and publiſh'd by (*b*) *Will. Prynne*, who, in his Preface, gives an Account how

(*a*) Inſtit. par. 3. cap. 101. (*b*) Fol. *Lond.* 1657.

moſt

moſt of thoſe that were elder than the Times of *Edward* the Third, came to be loſt. Some few, he ſays, he did meet with of an elder Date; which ſeem'd to have been overlook'd by that great Man, whoſe Work he here ſends abroad with ſome Garniſhings (as an *Index*, Marginal Notes, *&c.*) of his own. Amongſt thoſe that are thus omitted, he reckons the Rolls of the 5. 8. 9. and 19*th* Years of *Edward* the Second; the Statute-Roll of *Henry* the Third, *Edward* the Firſt and Second, a Parchment-Book of ſome Pleas in Parliament during the Reigns of the two firſt *Edwards*; and laſtly, a few Bundles of Petitions in the Parliaments of the Sixth Years of *Edward* the Firſt, and the four firſt Years of *Edward* the Third. He informs us likewiſe, that in the Clauſe, Patent, Charter and Fine, Rolls of King *John*, *Henry* the Third, *Edward* the Firſt and Second, he found ſome Writs of Summons, together with ſeveral ſhort Memorials of Acts and Ordinances, Aids, Subſidies, Diſmes and Quindiſmes, granted in the Parliaments of thoſe Reigns. The Rolls themſelves, whence theſe Abſtracts were taken, are now quite periſh'd and gone: Which he

he probably ſuppoſes to have happen'd either through the negligence of thoſe that were entruſted with the keeping of the Records, or the Iniquity of the Times, during the long continuance of our Civil Wars betwixt the King and Barons, and (afterwards) between the two Houſes of *York* and *Lancaſter*. In theſe Confuſions it was natural for the prevailing Parties, by themſelves or their Agents, to ſuppreſs or embezle all ſuch Records as made againſt their reſpective Titles and Intereſts; and the great Liberty, he thinks, that has been ſince taken by the King's Attourneys, and other Officers, in calling for the Remains of ſuch a Spoil, (without a due care of returning them, when their Occaſions were anſwer'd) has abundantly encreas'd the Damage The beſt and only ſupply, he obſerves, which is now to be had of theſe Defects, is from ſuch Fragments as are to be found in our later Records and antient Hiſtorians; eſpecially in *M. Paris*, *Weſtminſter*, *Malmesbury*, *Huntingdon*, and *Hoveden*, who frequently Regiſter the Parliamentary Proceedings and Tranſactions within the ſeveral Limits of their Hiſtories. Let me add, If the future

Changes to which all Humane Affairs are liable, ſhall hereafter expoſe theſe to new Loſſes and Embezlements, there's a fair Tranſcript to be had of them (from the firſt Year of *Edward* the Third, to the forty third of Q. *Elizabeth*) in (*a*) *Cotton*'s Library; where there are alſo (*b*) two Volumes of *Indices* to the Tower Records, the one whereof commences at the third of King *John*, ending at the fifty firſt of *Edward* the Third, and the other begins at the firſt of *Richard* the Second, and continues to the twenty-third of *Edward* the Fourth.

Ordinances. An *Ordinance* of Parliament is commonly diſtinguiſh'd from an *Act*; foraſmuch as the latter can only be made by the King, and a threefold Conſent of the Eſtates; whereas the former is ordain'd with one or two of them: So that (when the Clergy is omitted) whatever paſſes by the King, the Lords Temporal and Commons, is no more than an *Ordinance*. For this Opinion (*c*) Sir *Edward Coke* cites a great many Rolls of Parliament and other Authorities: And

(*a*) Vol. 16. *Titus*, E. F. (*b*) Ibid. *Titus*, C. 2.
(*c*) Inſtit. par. 4. cap. 1. p. 25.

for

for farther Satisfaction, the Reader may have recourſe to a Treatiſe (publiſh'd (*a*) about twenty years ago) concerning Statutes and Acts of Parliament, and the Expoſition. 'Tis ſaid to have been written by Sir *Chriſtopher Hatton*, the famous Lord Chancellor of *England* (and of the Univerſity of *Oxford*) in Queen *Elizabeth*'s Time: But ſome (*b*) have doubted whether that great Name were not unjuſtly uſurped, for the convenience of the Stationer, and to procure a more ready Sale of the Book.

Journals.

The laſt ſort of Parliamentary Records are the Journals of the Lords and Commons, wherein every Day's Vote that paſſes is carefully Regiſter'd by the Clerks of the ſeveral Houſes. I call theſe *Records*, upon very juſt Grounds, ſince the (*c*) Law it ſelf has declar'd that of the Houſe of Commons to be ſo. A Compleat Journal of the Tranſactions of both Houſes (from the firſt year of *Henry* the Eighth to the Seventh of *Edward* the Sixth) was drawn up by *Rob. Bowyer*, who

(*a*) 8°. Lond. 1677. (*b*) Vid. Ath. Oxon. lib 1. p. 223. (*c*) St. 6. Hen. 8. cap. 16.

was ſworn Clerk of the Parliaments *A. D.* 1609. and is now in (*a*) *Cotton's* Library.

Modus tenendi Parliamentum.

The true Primitive Conſtitution of our Parliaments is by ſome fancy'd to be beſt learn'd from an old Treatiſe bearing this long Title: (*b*) *Modus quomodo Parliamentum Regis* Angliæ *&* Anglorum *ſuorum tenebatur temporibus Regis* Edwardi, *filii* R. Ethelredi; *qui modus recitatus fuit per diſcretiores Regni coram* Willielmo *Duce* Normanniæ, *Conqueſtore & Rege* Angliæ, *ipſo Conqueſtore hoc præcipiente, & per ipſum approbatus, & ſuis temporibus & temporibus Succeſſorum ſuorum Regum* Angliæ *uſitatus.* Some great (*c*) Men, I ſay, have confidently believ'd this whole Story, and roundly affirm'd, that the Book was preſented (in the very manner here mention'd) to the Conqueror; who not only approv'd it, but held a Parliament purſuant to its Directions. It was afterwards, they ſay, tranſcrib'd in a Parchment-Roll, and ſent into *Ireland*, by *Henry* the Second; and exemplify'd (by the

(*a*) *Tiberius*, D. 1. (*b*) Bibl. *Cot.* Nero, c. 1. (*c*) Vid. Inſtit. Par. 4. cap. 1. p. 2.

Advice

Advice of Sir *John Talbot*, Lord Lieutenant, and the Privy-Council of that Kingdom) in the Sixth year of *Henry* the Fourth. It appears alſo that it was perus'd by the Compilers of the Statute of *Magna Charta*; who have ſtated the Relief of Earldoms, Baronies and Knights-Fees, according to the Proportions in this very *Modus*. 'Tis pity that all this ſhould be a miſtake. And yet (*a*) Mr. *Selden* very reaſonably argues, that this Venerable Monument cannot be elder than the Reign of *Edward* the Third; and that the whole is *an Impoſtor of ſome bold fancy*. This he proves from the Terms of *Juſticiæ de Banco*, *Capitalis Juſticiarius*, *Comes Seneſchallus*, *Comes Mareſchallus*, &c. which bear Date ſome Ages after the coming in of the *Normans*; nor could he ever meet with any Copy of it, (and he had ſeen ſeveral) that carry'd an elder Face. There never was any ſuch Rule obſerv'd in making of Earldoms and Baronies, out of ſo many Knights-Fees, as is there pretended: For ſeveral Earldoms, in the Times it refers to, conſiſted of more than twenty ſuch Fees;

(*a*) *Tit. of Hon.* p. 610, 611, 612, &c.

and ſeveral Baronies of leſs than Thirteen. The Author is alſo miſtaken in gueſſing at ſuch Uſages and Cuſtoms, as indeed never prevail'd in either Houſe of Parliament: As when he repreſents the Archbiſhops and Biſhops of the two Provinces, as placed on the King's Right and Left Hand; the equalling of Barons of the Cinque-Ports with Barons of the Kingdom, *&c.* Upon what juſt Grounds this Cenſure is given, every Man may now judge, ſince the Book it ſelf has been publiſh'd by (*a*) *W. Hakewell*, who has added ſeveral Collections of his own out of the Journals of the Houſe of Commons. There are other Treatiſes on the ſame Subject, and by later Hands, which bear a like Title; among which none outdoes that of *The* (*b*) *antient Method and manner of holding Parliaments in* England, by (that moſt accompliſh'd Clerk of the Houſe of Commons) *Henry Elſynge*; who was apply'd to as an Oracle by thoſe very Senators, whoſe Proceedings were (*c*) ſuppos'd to ſhorten his days. We have a later than this

(*a*) 12°. pr. 2 *s.* 6. *d.* (*b*) 8°. Lond. 1663. & 12°. 1675. (*c*) Ath. Oxon. lib. 2. p. 106.

under

under the Title (*a*) of *Memorials of the Method and Manner of Proceedings in Parliament in paſſing Bills*; which pretends to give a View of the Orders of the Houſe of Commons from Obſervation and the Journal-Books ever ſince the Time of *Edward* the Sixth: But there are few Particulars in it of an elder Date than the Union of the Kingdoms; and it (*b*) appears to have been penn'd in the days of Rebellion, when the Stile of the Supreme Government was the *Common-wealth* inſtead of the *Crown*. How Pleadings uſed to be managed in this Supreme Court of the Realm, in what manner Judgment was given, how Petitions were brought in, and in what Form Statutes and other Parliamentary Conſtitutions were antiently drawn, may be ſeen at large in *W. Ryley's Placita Parliamentaria*; in which we have Judgments upon ſuch Pleadings in the Parliaments of *Edward* the Firſt, and *Edward* the Second. To theſe there is added an Appendix of Statutes, Ordinances and other Records, whereby the Author would prove the

(*a*) 8°. Lond. 1689. (*b*) Vid. p. 84. (*c*) Fol. Lat. pr. 18 *s.*

Homage heretofore paid by the Kings of *Scotland* to ours, to be (as many other Writers, both before and after him, have endeavoured to do) for their whole Realm; and not ſolely for the *Engliſh* Counties which they held in Fee. Out of *W. Prynne*'s grand Storehouſe of Collections, we had what he was pleas'd to call the (*a*) firſt Part of the Hiſtory of the antient Councils, and Parliaments of *England*, from the Year 673, to the beginning of *Henry* the Third's Reign; which was (*b*) afterwards transform'd into a *Seaſonable, Legal, and Hiſtorical Vindication of the good old Fundamental Liberties, Rights, Laws, and Government, of all* Engliſh *Freemen*: And this, with a Second Part to the ſame Tune, was Reprinted the year following. A great many more Writers have treated on this Subject; ſome whereof are not worth the naming.

Houſe of Commons.

The Preface to *Nath. Bacon*'s Diſcourſe on the *Engliſh* Government, (formerly mention'd) is an Anſwer to a Treatiſe endeavouring to prove, that

(*a*) 4°. Lond. 1649. (*b*) 4°. Ibid. 1654.

the

the Lords were the only Parliament before the Thirteenth Century: But his Concluſion ſhews that he could not be an Impartial Writer in the Cauſe. If *ſometimes*, ſays he, *a Parliament of Lords onely may be againſt the King, and ſo without King or People; as in the Caſe between* Stephen *and* Maud *the Empreſs, and the Caſe of King* John; *poſſibly it may be thought as rational for the Commons in after Ages to hold a Parliament without King or Houſe of Lords; and then all the Opponents Labour is to little purpoſe.* The Debate has been lately reaſſumed; and managed on both ſides, with leſs Virulence and better Manners. The chief Aſſerters of the Antiquity of the Commons are Mr. *Petyt* in his (*a*) *Antient Right of the Commons of* England, and Mr. *Atwood* in his *Jani Anglorum facies* (*b*) *altera*; who are both amply taken to task by the Induſtrious and Learned (*c*) Dr. *Robert Brady*, the King's Profeſſor of Phyſick at *Cambridge*, and ſometime a Repreſentative of that Univerſity in Parliament. Againſt Mr. *Petyt* he takes upon him to prove expreſly,

(*a*) 8°. Lond. 1680. (*b*) Vid. Argument. Anti-Norman. p. 154. (*c*) In his Introduction to the old *Engliſh* Hiſtory. Fol. Lond. 1684.

1. That

1. That the Commons of *England* (repreſented by Knights, Citizens and Burgeſſes in Parliament) were not introduced, nor were one of the three Eſtates, before the *49th* year of *Henry* the Third; and, 2. That, if they were any way repreſented in thoſe great Councils, before that time, it was by the *Tenentes in Capite*. His Controverſie with the other Gentlemen (the *New Face-maker*, as he calls him) is bottom'd upon King *John*'s Charter; which his Adverſary ſays, does abundantly prove, that all Cities, Burghs, and Free-holders, were conſtituent Parts of the Common-Council of the Kingdom: Whereas, ſays he, it only intimates, that all theſe had antiently their free Cuſtoms, and local Uſages, which are here confirm'd. In both theſe Diſcourſes the Dr. ſhews himſelf to be very converſant, and well skill'd, in our *Engliſh* Records; which we have all the reaſon in the World to believe are fairly and faithfully cited; and whether the Inferences that he draws from them are juſt and reaſonable, his Readers muſt judge. He ſeems to have been as ſolicitous as we can well deſire an Author to be, to give us all due Satisfaction

tisfaction in this Particular. *Before the Uſe of theſe Records, I conſider'd* (ſays he) *again, and again, whether I might not be miſtaken in their true Meaning; and likewiſe conſider'd all Circumſtances, and compared them with other Relations of the ſame Time and Things, wherever I could find them.* What farther care could we poſſibly expect? One would hope that a Work thus cautiouſly carry'd on, might be entirely rely'd on, and ſo effectually maintain its Point, as never to be overthrown: And yet an Attempt was made to expoſe and run it down, as an impotent Libel againſt the Government by King, Lords, and Commons) in a Book Entitul'd, (*a*) *Jus Anglorum ab antiquo*, in the Concluſion whereof there's a Sham Speech, pretended to be made upon the Doctor's Principles, which is, indeed, Libellous enough upon our *Engliſh* Government. What ſeem'd conſiderable in this Book, was reply'd to in an Anſwer to (*b*) *Argumentum Anti-Normannicum*, a Piece written (as the Doctor gueſſes) by the ſame Author in Maſquerade. There

(*a*) *Suppos'd to be written by Mr.* Atwood. Vid. Argument. *Anti-Norman.* p. 69. (*b*) 8°. Lond. 1682.

Was

was another Anſwer to Mr. *Petyt*'s Book, written by (*a*) Sir *William Dugdale*: But, as that has leſs in it than what was advanc'd by Dr. *Brady*, ſo it ſeems to have been left unfiniſh'd, uppon the Notice the Author might have of the like Undertaking by another Hand. I have often wonder'd that none of theſe Inquiſitve Gentlemen ever mention a Record, in the *Norman Saxon* Dialect, which was long ſince publiſh'd by (*b*) Mr. *Somner*; and appears to me to have ſomething very remarkable on this Subject. It bears Date the 18*th* of *October*, in the forty-ſecond Year of *Henry* the Third, and manifeſtly diſtinguiſhes 'twixt thoſe Members of Parliament that were choſen by the King, and thoſe that were Elected [þuꝛg þæꝛ loan ðeꝛ ꝼolk] by the People: Which ſeems plainly enough to prove that the latter had their Repreſentatives here before the 49*th* of that King. Sir *Henry Spelman*'s Treatiſe (*c*) of Parliaments, is ſhort and full; and what Summarily determines all Diſputes concerning the antient

(*a*) MS. in Muſæo Aſhmol. Lit. E. 2. (*b*) In Dictionar. Anglo.Sax. voce Unnan. (*c*) Reliq. *Spelman*.p. 57, *&c.*

Con-

Conſtitution of theſe Auguſt Aſſemblies. He ſhews that the meaneſt Vaſſals in the Kingdom had their Repreſentatives or Maſters, in the moſt Primitive Councils of the Nation, who had a ſufficient Power to Act for, and conclude them: So that what theſe Senators (even before the Conqueſt) agreed to, was Indiſpenſibly and Univerſally obliging. And truly, if (*a*) *Conceſſa à Rege, Baronibus & Populo*, be right *Latine* for Acts of Parliament, their Original Date is very antient.

Lords.

The Houſe of Lords is (on all hands) agreed to be *Curia* as well as *Concilium*; the higheſt Court of Judicature in *England*; from whence no Appeal lyes, ſave only to a ſucceeding Parliament. Their Rights of Judicature, *&c.* are particularly ſtated and examined in two Treatiſes uſually aſcribed to Mr. *Selden*; though the former is ſuſpected to have been written by Sir *Symonds D'Ewes*. 1. (*b*) A brief Diſcourſe concerning the Power of Peers, and commons of Parliament, in point of Judicature; a

(*a*) Vid. LL. *Ed.* Confeſs. cap. 8. (*b*) 4°. Lond. 1640.

ſmall

ſmall Pamphlet of two Sheets. 2. (*a*) Priviledges of the Baronage of *England*, when they ſit in Parliament. There have, indeed, often happen'd Debates (even in the Houſe of Peers it ſelf) about the Rights of the Lords Spiritual, to Vote in Capital Caſes; and the Merits of the Cauſe have been argu'd by ſeveral Perſons of great Learning and Acquaintance with the Antiquities and Records of this Kingdom. The Diſpute was carry'd ſomewhat higher in the Year 1660 when the laſt Conflict happen'd betwixt Epiſcopacy and Presbytery; and then a (*b*) learned Apology was publiſh'd by *Jer. Stephens*, Prebendary of *Salisbury*, the excellent Coadjutor (*c*) of Sir *H. Spelman* in his Edition of our antient Councils. Afterwards, when this general Attaque upon the whole Order had fail'd, the Argument was confin'd to the ſingle Caſe before-mention'd; and then, in defence of the Spiritual Lords, we had their (*d*) *Honour Aſſerted*, and the (*e*) *Grand Queſtion concerning the Biſhops Right*, &c. the latter whereof was writ-

(*a*) 8°. Lond. 1642. (*b*) 8°. Lond. 1660. (*c*) Vid. Præfat. ad Concil. Tom. 1. (*d*) Fol. pr. 1 *s.* (*e*) 8°. pr. 2 *s.* 6 *d.*

ten

ten by the Learned Dr. *Stillingfleet*, late Biſhop of *Worceſter*, who has given us all that the Rolls of Parliament and our antient Hiſtories afforded on that Subject. Theſe Advocates were reply'd upon by the Lord (*a*) *Hollis*, in a firſt and ſecond Letter to his Friend; aad a couple of Gentlemen, of the ſame Perſwaſion, bore up his Train in an Appendix. All that looks new in theſe Writers is, in a few words, overthrown by an Anonymouts Author of the (*b*) *Rights of Biſhops to Judge in Capital Caſes*, &c.

Some extraordinary Paſſages in the late Reign, put our Men of Law upon an Enquiry, not much canvaſs'd in former Times, Whether the King could diſpenſe with Penal Statutes? Sir *Edward Herbert*, Lord Chief Juſtice of the Common-Pleas, argu'd for the diſpenſing Power, in his (*c*) *ſhort Account* of the Authorities whereon Judgment was given in Sir *Edward Hales*'s Caſe; wherein he endeavour'd to prove, that every *Malum Prohibitum* was diſpenſible, *Diſpenſing Power.*

(*a*) *See his Remains.* 8°. pr. 4 *s.* (*b*) 8°. pret. 1 *s.* 6 *d.* (*c*) 4°. pret. 6 *d.*

and

and that our Kings have uſually diſpens'd with the (a) Statute which provides that no Sheriff ſhould continue above one Year, their Practice being juſtify'd by the (b) Unanimous Opinion of the Judges. This *Account* was (c) *examin'd* by *W. Attwood*, a Barriſter at Law; who undertook to ſhew that the Authorities, whereon the Chief Juſtice labour'd to excuſe his Judgment, were unfairly cited, and as ill apply'd. Before either of theſe appear'd in Print, Sir *Edward Atkins* (as himſelf tells us) had compleated his (d) *Enquiry* into the Nature and Grounds of this pretended Power; though, having not publiſh'd it till he met with the former of 'em, he added Animadverſions upon Sir *E. Herbert*'s Book. He proves that a *Non Obſtante* is a purely Popiſh Invention; about the ſame Date with the Doctrine of Tranſubſtantiation: That the Uſe of it is not warranted by Preſcription, Reaſon, or Law; and that our Parliaments never expreſly yielded this Point, tho' they have ſometimes prudently waved

(a) 23. Hen. 6. cap. 8. (b) An 2. Hen. 7. (c) 4°. pr. 1 s. (d) Fol. pr. 1 s. 6 d.

the

the diſputing of it. In the (*a*) Tryal of the Seven Biſhops there was a freſh Occaſion given for the unravelling of this whole Matter; and thoſe Learned Perſons who were of Counſel for the Prelates, gave us a clear View of whatever our antient Records afforded on that Topick.

Writs of Summons.

The great Councils of Parliament have been always call'd by a Writ of Summons from the King; wherein the antient (*b*) Words and Forms are religiouſly to be attended to and kept: And therefore, becauſe thoſe (in that directed to the Counties) require them to Elect *duos Milites gladiis cinctos*, an (*c*) Act of Parliament was neceſſary to allow the Election of *Notable Eſquires, or Gentlemen.* Whoever deſires a full Account of theſe Matters, may have recourſe to *Will. Prynne*'s voluminous (*d*) *Brief Regiſter*, or Kalendar of the ſeveral kinds and forms of all Parliamentary Writs: or perhaps he may, with more Eaſe, and greater Advantage, fetch his Inſtructions from Sir

(*a*) Fol. pr. 31. 6 d. (*b*) Inſtit. Par. 4. cap. 1. p. 1. (*c*) St. 23. Hen. 6. cap. 15. (*d*) 4°. pret. 25 *s.*

William Dugdale's (*a*) perfect Copy of all Summons of the Nobility to the great Councils and Parliaments of this Realm, from the *49th* of *Henry* the Third, to the preſent Times; wherein he will alſo find the like Mandates to the Clergy and Commons. Thoſe to the Laity ſometimes require them to appear *Cum Equis & Armis, ad faciendum ea*, &c. and the Writ directed to the Archbiſhops and Biſhops, Commands either their own Attendance ſingly, or (as moſt commonly) that they be accompany'd with the Priors, Arch-Deacons, and Proctors of the Clergy. The Liſts of the Nobility, ſummon'd in the ſeveral Reigns, are highly uſeful; ſhewing us, that many noble Perſons have been call'd to Parliament in Right of their Wives, others in the Life-time of their Fathers, and by ſuch Titles as (in Truth) were not yet deſcended upon themſelves, *&c.* As ſoon as the Houſes were met, they petition'd the King, that he would require the Archbiſhops and Clergy to pray for the Peace and good Government of the Realm and for a Continuance of the good Un-

(*a*) Fol. Lond. 1685.

derſtandin

derſtanding 'twixt His Majeſty and the Eſtates of His Kingdom: And, accordingly, the Writ *de orando pro Rege & Regno*, was common in *Edward* the Third's Time.

CHAP. III.

Of the Records of the King's Courts at Weſtminſter.

THE general Name of all thoſe is from the *Latine* word, *Recordor*: For a Record or Inrolment is a Memorial of the higheſt Nature. Hence they are well defined, (*a*) Memorials in Rolls of Parchment, of the Proceedings and Acts of a Court of Juſtice, which has Power to hold Plea, according to the Courſe of the Common-Law, of real, or mixt Actions, wherein the Debt, or Damage amounts to (at leaſt, Forty Shillings; which Courts of Record are created by Parliament, Letters-Patents, *Records in general.*

(*a*) Inſtit. Par. 1. Lib. 3. cap. 7. Sect. 438.

or Preſcription. During the Term wherein any Judicial Act is done, theſe Records remain in the Breaſt of the Court, and are alterable as the Judges ſhall direct: But afterwards they are in the Roll, and admit no Alteration, Averment, or Proof to the contrary. They carry ſo abſolute a Verity in our Law, that, upon a Plea that there is no ſuch Record, 'tis not to be try'd by Witneſs, Jury, or otherwiſe than only by it ſelf. The (*a*) ſtealing, or withdrawing of any Record, or Parcel thereof, Writ, Return, Panel, Proceſs, or Warrant of Attorney in the Chancery, Exchequer, or either Bench, is Felony. The County-Court, Hundred-Court, Court-Baron, *&c.* are not Courts of Record; and therefore the Proceedings therein may be deny'd, and try'd by Jury. Yet we ſhall beg leave to give them the Name of *Records* hereafter; ſince they may be of much more uſe and Authority in Hiſtory, than at the Bar. (*b*) *Monumenta quæ nos Recorda vocamus, ſunt Veritatis & Vetuſtatis Veſtigia.* This Deſcription of 'em, in a

(*a*) St. 8. Hen. 6. cap. 12. (*b*) Inſt. Par. 1. Lib. 1. cap. 11. Sect. 175.

large

large, and a more extended Senſe, will beſt agree with our preſent Notion and Uſe of the Word: though we ſhall readily allow, that thoſe of the former Denomination beſt deſerve the Name, and ought to have (what we here give them) the Precedence. So jealous have our Governours always been, of the exact Preſervation of theſe, that we have not only ſevere (*a*) Laws againſt either Judges, or Clerks, that ſhall be guilty of any falſe Entry, Raſure, *&c.* but, in point of Fact, we are aſſur'd, that Juſtice (*b*) *Ingham* (in the Reign of *Edward* the Firſt) paid no leſs than eight hundred Marks for a Fine; his Crime being only this, A poor Man was fined at 13 *s.* 4 *d.* and the Judge, in Compaſſion, caus'd the Roll to be raſed, and made 6 *s.* 8 *d.* As the Chappel at the *Rolls* grows full and overſtock'd, theſe Records are remov'd (by a ſpecial Writ to that purpoſe) to the Tower, where, in two ſeveral Apartments, they are methodically rank'd according to their various kinds and uſes. 1. In *Wakefield Tower*, we have

(*a*) St. 8. Ric. 2. cap. 4. (*b*) Inſt. Par. 1. Lib. 3. cap. 19.

the Enrolments of Leagues and Treaties with Foreign Princes; the Original Laws, as they paſs'd the Royal Aſſent; Authentick Memoirs of our *Engliſh* Atchievements in *France*, and other Nations; Forms of Homage from the Kings of *Scotland*; the Eſtabliſhment and Laws of *Ireland*; Liberties and Priviledges granted to Cities, Corporations, and private Subjects; Tenures and Surveys of Lands and Manours; *Inſpeximus* of Charters and Deeds made before, and ſoon after the *Norman* Conqueſt; Boundaries of all the Foreſts in *England*, &c. In ſhort, we have here (according to the Petition of the (*a*) Commons in Parliament) the perpetual Evidence of every Man's Right, (*b*) *without which no Story of the Nation can be written or prov'd.* 2. In *Julius Cæſar's Chappel*, in the White Tower, there's another mighty Collection of Records; out of which indefatigable *W. Prynne* gather'd his four large Volumes. Theſe are ſorted into ſeveral Claſſes, according to the Order of each King's Reign; beginning

(*a*) 46. *Ed.* 3. Num. 43. (*b*) Dr. *Chamberlane's* Angl. Not. Edit. 16. p. 329, &c.

with

with King *John*, and ending with *Richard* the Third. Here are alſo a deal of leſſer Preſſes and Drawers; with Inſcriptions on the outſide, directing to the different Matters in every ſuch ſeveral Reign. As, *Rot. Parliament. Placitorum Coronæ, Placitorum Parliament. Rot. Claus. Rot. Brevium, Finium, Inquiſitionum, Liberationum, Cartarum, Eſchaetriæ, Pat. Rot. Ordinationum. Rot. Franciæ, Scotiæ, Vaſconiæ, & Almaniæ. Rot. Roman. Judæorum, Ragman, Brangwin, Contrarientium.* The laſt was ſo called from the Barons that joyn'd with the Duke of *Lancaſter* againſt *Edward* the Second; who (being too great and powerful to be named Rebels) had the ſofter Name of (*a*) *Contrarients* beſtow'd on them. Any of theſe may be ſeen and perus'd by thoſe that have occaſion to conſult them, there being one appointed (by the Keeper) to attend, for that purpoſe, eight hours every day in Summer, and ſix in Winter. The Writs of *Inſpeximus* (which repeat to us the Ordinances, Letters-Patents, *&c.* of former Kings) have happily preſerv'd the Hiſtory of many

(*a*) Vid. Præfat. ad Inſtit. par. 4. p. 3.

notable Tranſactions, which had otherwiſe periſh'd: For Example, we ſhould not have known that the Biſhops and Arch-Deacons were forbidden by *William* the Conqueror to mix Juriſdictions with the Earl (Senator, or Alderman of the County) in the *Hundred*, or *Scyre-Gemots*, but for ſuch an (*a*) *Inſpeximus*, which we find in the Second Year of *Richard* the Second; at which time, it ſeems, ſuch an Authentick Prohibition was extant and in being. In the Caſe of *Read* and *Hide* (*b*) a *Vidimus* was produced under the great Seal, wherein were theſe Words: *Vidimus quendam Librum in Pergameno, intitulatum Volumen de Copiis Munimentorum ſeu diverſorum geſtorum & actorum Monaſterii de* Abingdon. It was reſolv'd by the Judges, that this Exemplification ought not to be given in Evidence; becauſe that which was exemplify'd, was not of Record, nor Publick, and in the Cuſtody of ſworn Officers. It was alſo reſolv'd, that no Record, or Inrolment of any Record, may be exemplify'd under the great Seal; o-

(*a*) Rot. pat. 1 Ric. 2. m. 13. n. 5. (*b*) Term. Mich. 20. *Jac.* 1. Com. Banco.

ther

ther than those of the Court of Chancery, or duely remov'd thither by *Certiorari*, &c. and that no Exemplification ought to be of a part of any such Record, but of the whole. A Bench of Antiquaries would never have been thus nice and scrupulous. *Tho. Powel*'s (*a*) Repertory of Records in the Exchequer, and Directions for the Search of those that are there, as likewise in the (*b*) Chancery and Tower, with the accustom'd Fees for such Enquiries, will be of some use to our Historian; as well as to those Practitioners in Law, for whom they were chiefly intended.

In the Ninth Year of *Edward* the Fourth, 'twas the declared Opinion of all the Judges of the Realm, (at a Tryal in the (*c*) Exchequer) that all the King's Courts have been time out of mind; so that 'tis not known which is the most antient. I shall not now move for the reversing of this Judgment; but shall only inform the Reader, that he may learn what Pleas are

Courts in General.

(*a*) 4°. pr. 2 *s.* (*b*) 4°. pret. 1 *s.* 6 *d.* (*c*) Instit. Par. 4. cap. 8.

tryable

tryable before each of theſe (and conſequently of what Nature their ſeveral Records are) from the Writings of ſuch Authors as have deſignedly treated of their Juriſdiction. *W. Lambard*'s (*a*) *Archeion* diſcourſes, after that Writer's learned way, of all the Supream Courts of Judicature in this Kingdom; and has been ſo well liked, as to admit of various Editions, with conſiderable Additions and Improvements. The fourth part of (*b*) Sir *Edward Coke*'s Inſtitutes gives likewiſe an Account of the Inſtitution, Rules, Juriſdiction, *&c.* of all the Courts in *England*, from the Parliament down to a Court-Baron. The Author confeſſes that, in this Work, he amaſs'd together every thing that ſeem'd (never ſo remotely) to belong to any of thoſe Heads under which he had firſt rank'd the whole of his Matter: So that, if there be ſome Repetitions and Tautologies, 'tis but what uſually happens in the prime Draughts of all Common-place-Books. His great Age, when he came to lick theſe Papers over for the Preſs, would not admit of Nicety and

(*a*) 8°. pret. 1 *s.* 6 *d.* (*b*) Fol. Lond. 1648, *&c.*

Ex-

Exactneſs, and he dy'd before they were publiſh'd. In *Will. Prynne*'s (*a*) Animadverſions upon them, a great many Miſquotations of Records, *&c.* are noted; and the learned Author is more ſeverely reflected on than he ought to have been for a Poſthumous Work, wherein we know not what Injuſtice might be done him by the Publiſhers of his Orphan-Labours. As the Caſe now ſtands with this Book, perhaps our firſt Enquiries after the Hiſtory of the Laws of this Kingdom ought to begin with the careful reading of Sir *Will. Dugdale*'s (*b*) *Origines Juridiciales*: which we ſhall find ſo accurately penn'd, and with ſo good a mixture of Learning and Judgment, that 'twill almoſt do the Work alone. I cannot give a better View of this moſt Elaborate Treatiſe, than by telling the Reader, that it fully anſwers its Title-Page, giving as compleat a Hiſtory as 'twas poſſible for one Man to furniſh us with, of the Original of our *Engliſh* Laws, Courts of Juſtice, Forms of Tryal, Puniſhments in Caſes Criminal, Law-Writers, Grants and Settlements of Eſtates, De-

(*a*) Fol. Lond. 1669. (*b*) Fol. Lond. 1666.

gree

gree of Serjeant, Inns of Court and Chancery. Under all these Heads the Collections are many, and the Method exact: So that we have abundance, without superfluity; and all we can wish for, without the hazard of being cloy'd. In the Conclusion there's a Chronology of the Lord Chancellors, and Keepers of the great Seal, Lord Treasurers, Justices Itinerant, Justices of the King's-Bench, and Common-Pleas, Barons of the Exchequer, Masters of the Rolls, King's Attorneys, Solicitors, and Serjeants at Law: In which, if any thing have escaped the Search of so diligent and curious a Writer, the Tables are so order'd, that every Reader's additional Discoveries are quickly Marshall'd and Tribed under their proper Columns. Out of these (and *W. Rastal*'s Table of Years) were stoln the (*a*) *Chronica Juridicialia*; being a Chronological Table of the Chancellors, *&c.* from the Conquest to the first Year of King *James* the Second: with a Catalogue of such Archbishops and Bishops as were, in all that time, entrusted with the chief Places of Ho-

(*a*) 8°. pret. 4 *s*.

now

nour and Eminence in the State. Sir *William* brings large (*a*) Quotations out of Sir *Henry Spelman*'s MS. Hiſtory of the Original of the four yearly Terms at *Weſtminſter*; which he calls *an Ample and Judicious Diſcourſe.* That Treatiſe is now correctly (*b*) printed, and appears to have very well deſerv'd the Character there given it; demonſtrating, with a great deal of ſolid Learning that theſe ſtated Seaſons of Judicature are owing to the Canon-Law. Nor ought this to be look'd on as a Novel Doctrine by any of the Sages of our Law; ſince they know very well, that 'twas (*c*) *at the ſpecial Requeſt of the King made unto the Biſhops*, that it was (ſome Ages afterwards) provided, that Aſſizes ſhould be taken in Advent, and Lent, Times prohibited in the Decretals for Matrimony, and Law-Suits. The Preface to this excellent Diſcourſe acquaints us, that it was written in the year 1614. to be communicated to ſome of his learned Friends, who had then newly form'd themſelves (he being one of their

(*a*) Orig. Jurid. cap. 32. (*b*) Reliq. *Selm*, pag. 69, &c. (*c*) St. 3. *Ed.* 1. cap. 51.

Num-

Number) into a Society of Antiquaries. This Colledge had been erected ſome years before, and was now to be renew'd: But King *James* the Firſt, jealous of their medling with State-Affairs, diſcountenanc'd the Project; and ſo it periſh'd in its Cradle. What might have been hoped for from the joynt endeavours of ſuch a learned ſet of Antiquaries as they were, and to what a heighth of Perfection they would have carry'd the Hiſtory of our *Engliſh* Laws and Government, is eaſie to imagine from this ſingle Performance; and a modern Reader will hardly avoid the having a ſecret Wiſh, that the Deſign were reviv'd in our Days.

Kings-Bench. The Court of King's-Bench is call'd (*a*) *Aula Regia* in our old Books, becauſe ſuppos'd to be where-ever the King himſelf reſides; and the Matters chiefly cognizable in it are *Propriæ Cauſæ Regiæ*, which we *Engliſh* by Pleas of the Crown. So that, in the Records of this Court, we are to look for all Judgments upon Notorious Treaſons, Breaches of the Peace, *&c.* as alſo for the

(*a*) *Bracton*, Lib. 3. cap. 7. fol. 105. b.

like

like upon Common-Pleas (by Bill for Debt, Covenant, Promiſe, &c.) againſt the immediate Officers of His Majeſty's Court; who, if impleaded elſewhere, would have been priviledg'd. This Court likewiſe corrects Errors and Grants out Prohibitions, for the keeping of all inferiour Courts (Eccleſiaſtical and Temporal) within their due Bounds and legal Juriſdiction. Its different Records, on all theſe various Occaſions, are to be ſought for in the hands of the ſeveral Clerks of the Crown, Declarations, Remembrances, Bayls and Poſtea's, Niſi prius, Rules, Errors, &c. together with the Filazers for the ſeveral Counties. The moſt antient Writer, (profeſſedly) upon the Pleas of the Crown is (*a*) Sir *William Stamford*; who carries on his Work by way of Common-place. *Ferd. Pulton*'s (*b*) Treatiſe *de Pace Regis & Regni*, is on the ſame Matter; and ſo is (*c*) Sir *Matthew Hale*'s Pleas of the Crown, and *J.* (*d*) *Bridell*'s *Jus Criminis*. But the moſt Copious is the (*e*) third part of Sir *Edward Coke*'s Inſtitutes; wherein

(*a*) 4°. Fr. pret. 5 *s.* (*b*) Fol. pr. 10 *s.* (*c*) 8°. pr. 2 *s.* 6 *d.* (*d*) 8°. pr. 1 *s.* 6 *d.* (*e*) Fol. Lond. 1660, &c.

the

the Author propoſes the ſame end to himſelf that he had in the Second, the comparing Statute-Law with Common, ſo as to diſcover which Acts are only Declaratory of former Laws, and which are New. Having run over all Criminal Matters, and their legal Puniſhments, he concludes with the Nature of Pardons and Reſtitutions; ſhewing how far, in each of theſe, our Kings can proceed alone, and where they want the Aſſiſtance and joynt Power of their Parliaments.

Chancery. *Polydore Virgil* muſt be in a Miſtake, when he affirms, that the Court of Chancery was brought in at the Conqueſt; if the *Mirror*, *Forteſcue*, and others, ſay true, that 'twas well known here in the *Saxon* Times. But then 'tis to be noted, that there are (at this day) two (*a*) ſeveral Courts in our Chancery; the one (which only was known to the Antients) wherein the Proceſs runs *Secundum legem & Conſuetudinem Angliæ*, which determines all Conteſts about Letters-Patents, Offices, *&c.* the other proceeds *Secundum*

(*a*) Inſtit. Par. 4. cap. 8.

æquum

æquum & bonum, and is of a later Date. The Proceedings of the former Court are not enroll'd, but remain *in Filaciis*; that is, filed up in the Petty-Bag-Office. The chief Clerk of this Court is the Maſter of the Rolls, who in his Patent is ſtiled, *Clericus Parvæ Bagæ*, as well as *Cuſtos Rotulorum & Domus Converſorum*. In his keeping are the Enrolments of all Letters-Patents, Treaties and Leagues, Deeds and Purchaſers-Recognizances, Commiſſions of Appeal, Oyer and Terminer, *&c.* ever ſince the beginning of *Henry* the Seventh's Reign, the reſt having been remitted to the Tower. Moſt of the Chancery-Records were, in an outragious manner, burn'd and deſtroy'd by the Rebels (under *Wat Tyler*, &c.) in *Richard* the Second's time; their Leader having inſolently given it out, that for the future, (*a*) *all the Laws of* England *ſhould come out of his Mouth.* Raſure and Embezlement of Records is alſo (*b*) one of the Charges againſt that King himſelf, upon his forced ſurrender of his Crown to *Henry* the Fourth.

(*a*) *F. Speed*, in Rich. 2. Sect. 19. 23. (*b*) Id. Ibid. Sect. 112.

There are ſome choice (*a*) *Obſervations* concerning the Office of Lord Chancellor, written by Sir *Tho. Egerton*, Lord Keeper of the great Seal in Queen *Elizabeth*'s time; who was alſo created Baron *Elleſmere*, and Lord Chancellor of *England*, by King *James* the Firſt. The excellency of this Treatiſe ſhould prevail with the Studious in our Laws, to make an Induſtrious Search after thoſe (*b*) other four Volumns of his Collections upon, 1. The Prerogative Royal. 2. Priviledges of Parliament. 3. Proceedings in Chancery. 4. The Power of the Star-Chamber. There's no doubt but all theſe are written with that accuracy and ſtrength of Judgment, which may reaſonably be expected from the vaſt extent of Learning and Parts, whereof this great Man was Maſter: For ſuch he has abundantly ſhewn himſelf to be, not only in the Book before-mention'd, but likewiſe in the large (*c*) Harangue which he made in the Exchequer-Chamber upon the new Signification of the word *Poſtnati*. Mr. *Selden* alone was fit to ſecond my

(*a*) 8°. Lond. 1651. (*b*) Vid. Ath. Oxon. lib. 1. p. 354. (*c*) Lond. 1609.

Lord

Lord *Ellesmere*; and he has left us a like learned (*a*) Discourse on the same Office, to which is added Sir *Will. Dugdale*'s Catalogue of Chancellors and Lord Keepers. There was formerly such a (*b*) Catalogue as this (together with the List of the Treasurers and Masters of the Rolls) publish'd by *John Philips*, Somerset-Herald.

There is one famous Monument of Antiquity belonging to this Court, which they call *Registrum de Cancellariâ*, or the Registry of Writs; containing the Form of Writs at the Common-Law, which issue out of Chancery, (*c*) *tanquam ex Officinâ Justitiæ*. For the better understanding whereof, we ought to consider the Distinction that *Bracton* gives us of Writs to be had in the Court of Chancery, (*d*) *Sunt quædam Brevia formata in suis Casibus, & quædam de Cursu, quæ concilio totius Regni sunt approbata; quæ quidem mutari non possunt absque eorundem contrariâ voluntate. Magistralia autem sæpe variantur secundum varietatem Casuum*, &c. These last, *Registrum de Cancellaria.*

(*a*) Fol. Lond. 1671. (*b*) 4°. Lond. 1636. (*c*) Inst. Par. 1. lib. 2. cap. 1. §. 101. (*d*) *Bract.* lib. 5. fol. 413. b. & *Fleta*. lib. 2. cap. 12.

which he calls *Magiſtralia*, are ſuch as are penn'd (in extraordinary Caſes) by direction of ſome of the twelve Maſters in Chancery: whereas thoſe that are in the Regiſter are only ſuch as are Common and Original. This being the chief Repoſitory of all the antient Forms of proceeding in our Courts of Juſtice is the (*a*) beſt Evidence we can produce that our *Engliſh* Common-Law was not borrow'd from the *Roman*; ſince we ſhall hardly find one Term in it, which is uſed in the ſame ſence by the Civilians, or to be met with in any of their Books. The Regiſter has been frequently printed; but moſt commonly extreamly falſe and uncorrect. In the (*b*) fourth Edition better care is pretended; and the former Prints are ſaid to have been diligently examin'd and compar'd with the Original. Some other Writs, not extant in the Regiſter, though us'd in the Office of the Clerk of the Crown, are added; as alſo the *Digeſt of Writs Original*, &c. compos'd by that eminent Lawyer, *S. Thelod.* This Induſtrious Gentleman was the

(*a*) Vid. *J. Seld.* Differt. ad *Fletam*, cap. 9. Sect. 1.
(*b*) Fol. Lat. pret. 1 *l.* 2 *s.*

firſt

firſt that reduced all the Readings and Diſcourſes upon Writs into a Methodical Common-place; which he therefore juſtly Entitled (*a*) *Le Digeſt des Brieſes Originals & des choſes concernants eux.* He obſerv'd, that after the pains taken by *Stathome*, *Fitzherbert* and *Brook*, our moſt learned Men of the Law (particularly Mr. Juſtice (*b*) *Stamford*) ſtill complain'd that this Subject was left in confuſion; and therefore he reſolv'd to attempt ſomewhat towards the finiſhing of ſo uſeful, though hitherto inperfect a Work: which he has ſo happily effected, that his Book does (to this day) very deſervedly bear a great and honourable Eſteem. In the former *Natura Brevium*, we had onely the Forms of ſeveral Writs under ſuch proper Heads as the Author was pleas'd to Tribe them, and in ſuch an Order as was not always agreeable; whereas here we have every particular Branch of the Matter it ſelf laid open, all manner of Original Writs Diſſected and Anatomiz'd, their ſound and weak Parts diſcover'd, *&c.* The Work is divided into ſixteen Books:

(*a*) Lond, 1579. (*b*) In Præfat. ad. Prerogat. Reg.

wherein is ſhew'd who may ſue out Writs, and againſt whom; and by what Names and Titles; to whom they are to be directed; what are juſt Matters of Complaint; what are the Natural, as well as Accidental, Nullities and Abatements in Writs; who may plead to them; in what Time, Manner and Form that's to be done; and (laſtly) how the Returns are to be made upon them, whith ſome other Incidents of a lower Conſideration.

Common-Pleas.

The *Common-Pleas* are ſo call'd, to diſtinguiſh them from *Pleas of the Crown*; which, as we have already ſeen, are tryable elſewhere. This Court is to be kept in ſome certain (*a*) and fix'd place; that the Subject may always be ſure where to apply for Juſtice. It hears all civil Cauſes, real and perſonal; levies Fines; ſuffers Recoveries; and (as well as the King's-Bench) grants Prohibitions. There are ſeveral Officers in whoſe hands Records and Proceedings are to be had. The Chirographer (and his Clerks) engroſſes all Fines, according to the ſeveral Coun-

(*a*) Inſtit. Par. 4. cap. 10.

ties;

ties; and the Clerk of the Treaſury makes out Records of *Niſi Prius*. There are others whoſe Names ſufficieutly intimate their Office; as, 1. *Cuſtos Brevium*. 2. Three Prothonotaries. 3. A Clerk of the Warrants. 4. A Clerk of the King's Silver, *Argenti Regis*. 5. Four Exigenters. 6. Fourteen Filazers. 7. A Clerk of Juries. 8. Clerk of the Eſſoignes. 9. Clerk of the Outlawries. The *Courſe* and *Practice* of it is given us in ſhort by *Tho. Cory* (*a*) Eſquire; ſometime a Prothonotary in that Court: And Dr. *Zouch* publiſh'd ſeveral learned Introductory Diſcourſes on (its great Rule) the Common-Law; As, 1. (*b*) *Deſcriptio Juris & Judicii Feudalis*. 2. *Deſcriptio Juris & Judicii Temporalis*; printed with Dr. *Mocket*'s Tract (*c*) *de Politiâ Eccleſiæ Anglicanæ*. 3. *Deſcriptio Juris* (*d*) *& Judicii Temporalis ſecundum Conſuetudines Feudales & Normannicas*. In the Reign (*e*) of *Edward* the Third, the Pleadings in this Court were brought to Perfection and Fineneſs; the Judges and Profeſſors of the Law being Learned, and the Serjeants

(*a*) 4°. pret. 6 *d*. (*b*) 8°. Oxon. 1634. (*c*) 8°. Lond. 1683. (*d*) 4°. Oxon. 1636. (*e*) Inſtit. Par. 1. Sect. 534.

drawing their own Pleadings themſelves. This is the moſt curious and diſtinguiſhing part of our *Engliſh* Law; whereof *Littleton* gives this high Character: (*a*) *Et ſaches* (*mon fits*) *que eſt un des pluis honorables laudables & profitables choſes en noſtre Ley, de aver le Science de bien pleder en actions reals & perſonals, & pur ceo jeo toy counſaile eſpecialment de mitter ton courage & cure de ceo apprender.* 'Tis this which is the chief Subject of all our antient Law-writers; as will be better made appear in another place.

Exchequer. The Court of *Exchequer* has its Name either (as the Green-Cloth) from a Chequer'd Carpet on the Table; or from the *French* Word *Eſchequier*, a Cheſs-board; becauſe the Accomptants antiently uſed ſuch in their Calculation. There's a double Court here, as well as in Chancery. All judicial Proceedings, according to Law, are *coram Baronibus*: But the Court of Equity is *coram Theſaurario, Cancellario & Baronibus.* The latter had only its beginning in the firſt year of *Philip* and *Mary*:

(*a*) Tenur. lib. 3. cap. 5.

But

But the former is of a very antient Date. The King's three Courts (ſays a celebrated (*a*) Writer) were originally in one, the Court of Lords, who deputed Judges on ſeveral Occaſions: And, becauſe that which concern'd the publick Treaſure was of more regard than the other, the Deputation thereof was probably committed to ſome of their own Members, who in thoſe days were *Barons* of the Realm, and afterwards retain'd the Title, but not the Degree. The more probable account is, That the whole Uſage (*b*) of this Court was brought from *Normandy*, where the faſhion was to call all ſorts of Judges *Barons*. Here we have the Records of a great many inferiour Courts that are now utterly aboliſh'd, ſuch as Returns of Proceſs before the Juſtices of *Trailbaſton*, *Wards* and *Liveries*, &c. Into the Pipe-Office were likewiſe Returns antiently made of the Eſcuage paid out of all Knights Fees in the ſeveral Counties of *England*, and in the old Rolls we find the Liſts ſtill extant under the Titles of (*c*) *De Scutagiis*

(*a*) *Nat. Bacon's* Hiſtor. Diſc. p. 190, 191. (*b*) D. *Hen. Spelm.* Gloſs. in voce *Baro*, &c. (*c*) Tit. of Hon. p. 574.

Baronum

Baronum qui non abierunt, nec Milites nec Denarios miſerunt ad Exercitum Hiberniæ, Galweiæ, Walliæ, *&c.* The Treaſurer's Remembrancer makes Proceſs againſt Sheriffs, Bayliffs, and other antient Receivers of Fee-Farm-Rents, *&c.* as the King's does againſt the Collectors of Cuſtoms and other new erected Parliamentary Revenues. The Remembrancer of the firſt Fruits and Tenths is an Officer alſo within the Rule and Survey of the Exchequer, though his Office has, for many years paſt, been kept in *Hatton-Garden*. He takes Compoſitions for all thoſe Payments; and makes Proceſs againſt ſuch as neglect them. The Valuation of the Church-Dignities and Benefices in *England* was firſt taken in the twenty'th year of *Edward* the firſt: And there are (*a*) ſeveral Manuſcript Copies extant of the Returns made by the Commiſſioners appointed for that purpoſe. One (*b*) in Parchment bears the Title of *Liber Taxationum omnium Beneficiorum in* Anglia: Another has this Note endors'd upon it, (*c*) *This Manuſcript was written* An.

(*a*) *W. Kennet's* Paroch. Antiq. p. 315, 316. (*b*) in Bibl. Bodl. (*c*) Ibid.

1291.

1291. Nicholas *the Fourth being Pope*, 19. Ed. 1. and a third (*a*) Tranſcript of a great part of the Book is amongſt *R. Dodeſworth*'s Collections. He that deſires to ſee the Valuations as they now ſtand, may either conſult the *Index Villaris*, publiſh'd by (*b*) Mr. *Adams*, or the printed Book of the (*c*) Valuations it ſelf; which ſeems to be taken from a Copy drawn in or about the latter end of Queen *Mary*'s Reign, which bore this Title: *Nomina & Valores omnium & ſingulorum Archiepiſcopatuum, Epiſcopatuum, Archidiaconat. Decanat. Prebendarum, Eccleſiarumque Paroch. infra Regnum ac Dominia* Angliæ, *ac omnium aliarum promotionum quarumcumque Spiritualium infra eadem, quæ ad ſolutionem decimæ partis earund. Dom.* Regi & Reginæ *nuper tenebantur*. There was formerly an *Eſcheator* choſen annually in the Exchequer for each County; whoſe Office 'twas to collect all *Eſcheats* (or extraordinary and dropping Dues) for the King's Uſe; and in the Rolls that belong'd to this Charge, we have all the Forfeitures, Heriots, Wards, Lapſes of Advowſon, Revenues of va-

(*a*) Vol. 86. (*b*) Fol. Lond. 1680. (*c*) 12°. 1680.

cant

cant Dignities and Livings, *&c.* The Inquiſitions taken by theſe Officers, upon the Death of any Gentleman of Eſtate, afford perhaps the trueſt Draughts of the ſeveral Counties in *England*; and the Writs of *Amoveas manum*, or *Reſeiſer*, which were ſometimes (*a*) ſent to them upon ſuch occaſions, do frequently farther illuſtrate to us the then Condition of ſuch Lands and Poſſeſſions. In the Hands of the two Chamberlains of the lower Exchequer (where all Receipts and Diſburſements are made) there are many antient Records, Leagues and Treaties with Foreign Princes, Standards of Money, Weights and Meaſures, Domes-day, the Black Book, *&c.* ſome whereof will require our particular Notice. For a fuller Account of this Court, the Reader may have recourſe to the (*b*) *Practice of the Exchequer-Court*; wherein a view is given of its ſeveral Officers, and the Power and Duty of each Perſon. *Arth. Agard* (*c*) left alſo with the Officers here a Regiſter (of his own Collection) of all the Records in the four

(*a*) Vid. Stat. de Eſchaet. 29. Ed. 1. (*b*) 8°. by Sir T. F. pret. 1 *s.* 6 *d.* (*c*) Ath. Oxon. lib. 1. p. 444.

Trea-

Treaſuries, how they are now placed, and how to be preſerv'd for the future: And this Book he depoſited in the Receipt-Office, to be transferr'd in Succeſſion by way of Inventory and Indenture. He likewiſe requir'd his Executors, for a ſmall Conſideration, to make over to the ſaid Officers eleven other Volumes of his Compoſure; wherein he had made ſuch Obſervations as he believ'd might be helpful to them, and ſerviceable to the Intereſt of the King their Maſter.

The Court of *Augmentations of the Revenues of the Crown of* England was erected by (*a*) Act of Parliament, at the ſame time that all the leſſer Monaſteries (not exceeding two hundred Pounds in yearly Revenue) were granted to the King: and was appointed to conſiſt of a Chancellor, Treaſurer, Attourney and Solicitor. All purchas'd and Abby-Lands were within their Survey; and therefore, for the better regulating of this newly *Augmented* Branch of the Royal Revenue, they had Poſſeſſion given them of all the *Augmentation-Office.*

(*a*) St. 27. Hen. 8. cap. 28.

Lieger-

Lieger-Books, and Regiſters belonging to ſuch Monaſteries: For the Act provided, that not only the Mannors, Graiſnges, Lands and Tenements, but alſo all their Ornaments, Jewels, Goods, Chattles, and Debts, ſhould fall into the King's hands. Afterwards (*a*) ſeveral diſpers'd Parks, Meſſuages, *&c.* were united into Mannors, and put under Order and Survey of this Court; which was ſufficiently provided with all the requiſite old Charters, Grants, and Evidences, thereunto belonging. It was diſſolv'd by Queen *Mary*'s Proclamation, in the firſt year of her Reign, purſuant to a Power given her to that purpoſe by Act of Parliament: But ſtill there's an Apartment in the Exchequer, which bears the Name of the *Augmentation-Office*, wherein are to be had a deal of the fore-mention'd Regiſters, *&c.* Theſe were of great uſe to *Dodesworth* and *Dugdale*; who acknowledge the helps they had from hence, in the compiling of the *Monaſticon* (*b*) *Anglicanum.*

(*a*) St. 33. *Hen.* 8. c. 37, 38. (*b*) Vid. Tom. 1. p. 398, 601, 961. Tom. 2. p. 109, 258, 962, 1007.

Amongſt

Amongſt all the antient Records in the Exchequer, *Domesday*-Book is deſervedly of the greateſt Reputation and Value. The Name is undoubtedly of *Saxon* Original; and was plainly uſed in their times, in the ſame ſenſe 'tis here taken: They call'd the Judge's Directory his (*a*) *Dom-boc*; which was an (*b*) Inquiſition taken of the ſeveral Diſtricts of the Kingdom, when King *Ælfred* divided it into Counties, Hundreds, and Tithings: And *Fabian* (*c*) tells us, that the Citizens of *London* had formerly an old Regiſter, wherein were Recorded the Names of the *Portgreves*, together with the Laws and Cuſtoms of that City, which in the *Saxon* Tongue was called the *Domesday*. This ſeems to countenance an (*d*) ingenious Perſon's Obſervation, that the Addition of *Dey* or *Day* (by turning *Dom-boc* into *Domesday-Book*) does not augment the ſenſe of the Word, but onely doubles and confirms it; ſince the word *Dey*, or *Day* in that compoſition does not really ſignifie the Meaſure of Time, but the Adminiſtration of Juſtice. Dr. *Ham-* *Domes-day.*

(*a*) Vid. LL. Edv. R. in Præfat. & c. 8. (*b*) *W. Kennet*, Gloſs. ad Antiq. Paroch. voce *Domesday-Book*. (*c*) Vol. 2. p. 1. (*d*) *Kennet*, ubi ſupra.

mond

mond takes (*a*) notice, that *Day* in all Idioms, ſignifies Judgment, as Ἀνθρωπίνη ἡμέρα (*b*) is Humane Judgment, *&c.* and even now, in the North of *England*, *Daysman* is an Arbitrator, Umpire or Judge: So as *Domesday-Book* is no more than the Book of Judicial Verdict, or Decretory Sentence and Dooming of Judgment. And thus is the reaſon of its Name given by *Gervaſe* of *Tilbury*, who ſhould beſt underſtand it: (*c*) *Non quod in eo de propoſitis aliquibus dubiis feratur ſententia, ſed quod à prædicto Judicio non liceat ulla ratione diſcedere.* In relation to the firſt intent and deſign of it 'tis frequently call'd *Liber Cenſualis totius Angliæ*: For 'tis (in truth) a Tax-Book, made by *William* the Conqueror's Commiſſioners, wherein is an exact Survey of all the Cities, Towns and Villages in *England*. It does not onely account for the ſeveral Baronies, Knights-Fees, and Plowlands; but gives alſo the Number of Families, Men, Soldiers, Husbandmen, Servants and Cattle; what Rent, how much Meadow, Paſture, Woods, Tillage,

(*a*) In Annot. ad Heb. 10, 25. (*b*) 1 Cor. 3. 13.
(*c*) Citat. à *D. Guil. Dugdale*, Orig. Jurid. p. 7.

Common,

Common, Marſh, Heath, every one poſſeſs'd. The bittereſt part of it was, That, to reimburſe the King his Expences, in framing this great Roll of the Kingdom, Six Shillings was laid upon every Plowland: (*a*) which made the Deſign of it leſs agreeable to the People, though every Man's Right thereby receiv'd a new Evidence, and no Injuſtice was complain'd of in the Digeſtion of ſo difficult a Work, and of ſo various a Nature. This noble Survey was begun in the ſixteenth year (as (*b*) ſome will have it) of the Conqueror's Reign; or, as others (*c*) in the fourteenth; and was finiſh'd, as the Book it ſelf witneſſes, in the twenty'th. 'Tis in two Volumes, whereof the former gives a ſuccinct Deſcription of thirty-three Counties, and the latter (which was finiſh'd in the very laſt year of that King's Reign) gives a ſomewhat larger Account of *Eſſex*, *Norfolk*, and *Suffolk*. The four Northern Counties of *Durham*, *Northumberland*, *Cumberland*, and *Weſtmerland*, are wholly omitted: and *Lancaſhire* comes under the Titles of *York-*

(*a*) Sir *W. Temple*'s Introd. to Hiſt. p. 256, 257. (*b*) Annal. *Waverl.* ad An. 1083. (*c*) Lib. Rub. Scacc.

ſhire and *Cheſhire*. In the Front of each County ſtands a Liſt of the Lords of the Soil, that is, the King and a few of his Nobles; and the number of theſe aſcertains the number of the Chapters for that County. Sir *H. Spelman* (*a*) has given us a Sample of the Book; which may be of good Uſe and Aſſiſtance to ſuch as ſhall have occaſion to conſult it, and are Strangers to its Orthography.

Norf. Rex.

H. de Galgow. In Facenham ten' Herold'. t. r. e. iſ. car'. ter'. ſemp'. v. vill'. ⁊ xx. bor'. ⁊ iiij. ſerv'. ſemp. in. dmo'. ij. car' ⁊ hom. iiij. car'. Silva ad xij por'. v. acr. pra' iij. mol'. dimi. ſalina. Semp. iij. r'. ⁊ xxvij. por'. ⁊ cc. ov'. Huic man'. pertinet i. beruita Alatorp de i. car'. &c.

(*a*) Gloſſar. in voce *Domeſdei*.

Fagenhamhet'.vij.quar'. in long. ⁊ dimi. in lat. ⁊ xij. d' in gelt. Which is to be Read thus :

In Comitatu *Norfolcia Rex* tenet terras ſubſcriptas, *viz. In hundredo de Galgow. In Fazenham tenuit Heroldus* quidam *tempore Regis Edvardi* Confeſſoris *duas carucatas Terræ. Semper* erant ibi *quinque villani, &* xx *Bordarii, & quatuor ſervi. Semper in Dominico* ii. *carucatæ, &* inter *homines* (Scil. Vaſſallos & Colonos) *quatuor Carucatæ. Silva ad duodecem porcos* ſaginandos. *Quinque acræ Prati.* iii. *Molendina. Dimidia ſalina. Semper* iii. *runcini, &* xxvii. *porci, &* cc. *oves. Huic manerio pertinet una beruita, Alatorp, de una carucata Terræ,* &c. *Fagenham habet* vii. *Quarteria milliarii in longitudine, & dimidium in latitudine, &* reddit Regi xii. *denarios in Gelt.* i. in geldo ſeu Tributo. Neither of theſe Volumes (which are kept under three Locks) are to be conſulted under a Fee of ſix Shillings and eight-pence; and four-pence is to be likewiſe paid for every Line you tranſcribe. Amongſt ſeveral MSS. of

great value, which were bequeath'd to the *Cottonian* Library by *Arthur Agard*, Deputy-Chamberlain of the Exchequer, there's (*a*) one of his own Compoſure, Entitled, *Tractatus de uſu & verbis obſcurioribus Libri de Domesday*; wherein is alſo given the whole Hiſtory of its Compoſure, the ſeveral Names by which it has been call'd, *&c.*

Red-Book. There is alſo, in the keeping of the King's Remembrancer, an antient Miſcellany of ſeveral notable Treatiſes; which Volume is commonly cited, and call'd by the Name of *Liber ruber Scaccarii*, or the *Red-Book* of the Exchequer. It has ſome things (as the Number (*b*) of the Hides of Land in many of our Counties, *&c.*) relating to the Times before the Conqueſt: And the Ceremonies uſed at the Coronation of Queen (*c*) *Elianor*, Wife to King *Henry* the Third, are there at large. There's likewiſe an exact (*d*) Collection of the Eſcuages under *Henry* the Second, *Richard* the Firſt, and King *John*; compil'd by *Alexander* Archdeacon of *Shrewsbury*, a

(*a*) *Vitellius*, C. ix 26. (*b*) Vid. Hiſt. Angl. Scriptt. xx. a *Tho. Gale*, Vol. 1. p. 748. (*c*) *Selden's* Tit. of Hon. p. 149. (*d*) Id. ibid. p. 573. 574.

moſt

moſt diligent Officer in the Exchequer, in the Reigns of the two laſt mention'd Kings, and *Henry* the Third, in whoſe time he wrote that Book. In the (*a*) Preface to this Work he ſays he Collected alſo, into one Volume, the Certificates made by all the Prelates and Barons of *England*, (to King *Henry* the Second) of the Number of Knight's-Fees held by each of them; and this, he ſays, he did in the Service of *William* Biſhop of *Ely*, Lord Chancellor in the time of *Richard* the Firſt. Such a Collection as this there is likewiſe in this very Volume; which is reaſonably believ'd to be the ſame he there ſpeaks of, the Title being *Eſcuagium tàm ſuper Prælatis quam cæteris Baronibus aſſiſum.* When Sir *Edward Coke* (*b*) affirms that the *Red Book* was written in the time of *Henry* the Firſt, he is to be underſtood a little Figuratively; ſince 'tis plain that it could not (all of it) be penn'd ſo early.

The *Black Book* was compiled by *Gervaſe* of *Tilbury*, (*c*) Nephew to King *Black Book.*

(*a*) Lib. Rub. fol. 47. (*b*) Inſtit. Par. 4. cap. 53. in Margine. (*c*) *Joh. Stow*, ad an. 1176.

Henry the Second, in the twenty-second year of that King's Reign. In this we have the History of the first Institution of the Court of the King's Exchequer; the Reason of its being named *Scaccarium*; the Names and Titles of all the Officers, both on the Chequer and Treasury sides; their Duties, Priviledges, Fees, *&c.* the Order and Form of issuing out Writs and Tallies; the manner of stating the Accounts of those Times, and the way of Collecting the Rents, both in Money and Purveyances of Victual, *&c.* Some share of the Book at least (as particularly the last Chapter save one of the first Part, which bears the Title *de Libro Judiciario*) (*a*) Sir *Henry Spelman* ascribes to *Hen. de Bloys*, Bishop of *Wincheſter*. I know not what Authority that worthy Person might have for such an Assertion: But I suspect that Bishop's being Nephew to our first *Henry*, as *Gervase* was to the Second, and there being frequent mention made of the State of the Treasury under the former of those Princes, might occasion the mistake. In other places of the same (*b*) Work, he confesses the Book

(*a*) Gloss. voce *Domesdei*. (*b*) Ibid. voce *Arsura* & *Cancellaria*.

was

was commonly reputed to be *Gervaſe* of *Tilbury*'s; and, in the Concluſion, (*a*) he ſeems to have been fully brought over to that Opinion himſelf, and boldly aſcribes it to him.

Teſta Nevilli, &c.

The great Roll that's here of all the Lands held in (*b*) Grand or Petty Sergeanty within the County of *Hereford* (being written in the Reign of *Henry* the Third, and bearing the Title of *Teſta Nevilli*) ſeems to be nearly related to the *Nomina Villarum*, cited by (*c*) Dr. *Fuller*; ſaving only that this latter Manuſcript (which is alſo ſaid to be in the Exchequer) is of a more general Extent. It was compiled, as he ſays, by order of King *Edward* the Firſt; who, in the ninth year of his Reign, directed his Letters Mandatory to all Sheriffs of Counties, requiring them to make Returns, *qui & quot Hundredi ſunt in Baliva tua, & quorum ſunt; & quæ & quot Civitates, Burgi & Villæ ſunt in quolibet Hundredorum illorum; & qui ſunt Domini eorundem. Tibi præcipimus, firmiter injungentes, quòd modis*

(*a*) Ibid. voce *Staccarium*. (*b*) Ibid. in voce *Chachepollus*. (*c*) Worthies of *Engl.* p. 365. in *Gloceſtr.*

& viis omnibus, quibus plenius & diligentius poteris, te informes de præmissis, &c. Thus runs the Letter directed to the Sheriff of *Gloceſter*, which our Author exemplifies at large; and he farther tells us, that it appears, from ſome paſſages in the Book, that this Survey was not compleated till twenty years after the Date of theſe Writs. Here's a Story ſo like that we have already had of the Conqueror, in all its Parts and Circumſtances, that it would tempt a Man to look for a Counterpart of *Domesday*; and to hope that King *Edward*'s Inquiſition, being taken two hundred years later, would prove the nobler Piece of the two. But I am much afraid that theſe *Nomina Villarum* are little better than an empty ſound; ſince I have not met with any other Writer that has magnify'd this Relique at the Doctor's Rate.

CHAP.

CHAP. IV.

Of the Records of Aſſize, Seſſions of the Peace, and other inferiour Courts in England *and* Wales.

Aſſizes.

Aſſizes, properly ſo call'd, were firſt inſtituted by King (*a*) *Henry* the Second; and *Niſi prius* by the (*b*) ſecond Statute of *Weſtminſter*. The former had its Name from the *Aſſiſæ novæ Diſſeſſinæ*, which the Judges are empower'd to take in their Circuits, tho' that Method is now much laid aſide: But they are (by many Acts of Parliament) inveſted with new Powers of trying Murders, Treaſons, Felonies, Riots, *&c.* The other ſhould be rather call'd *Si priùs*; for ſo runs the Writ, *Si priùs die Lunæ*, &c. *venerint*. 'Tis elſewhere obſerv'd how pernicious a matter it has always been eſteem'd to alter or eraſe any Records in the Courts at *Weſtmin-*

(*a*) Vid. Reliq. *Spelm.* p. 90. (*b*) St. 13. *Ed.* 1.

ſter,

ſter, even by the Judges themſelves; and 'tis alſo long ſince enacted, (*a*) That *the Juſtices, aſſign'd to take Aſſizes by the King's Commiſſion in the Counties of the Realm, ſhall cauſe to be deliver'd fully in the King's Treaſury all the Records of Aſſizes of* Novel Diſſeiſin *and* Mordance ſtor, *&c. every ſecond Year; and that the ſaid Records ſhall in no wiſe be amended or impair'd by new entring of the Clerks*, &c. There's a little Book, call'd the (*b*) *Office of a Clerk of Aſſize*; wherein is the Form and Method of proceeding here, and at a general Goal-Delivery, together with Precedents of Preſentments, Indictments, *&c.* And for the better Inſtruction of Juries, we have ſome other uſeful Tracts. Thoſe on the Crown ſide ought not to be Strangers to *Zach. Babington*'s (*c*) Advice to grand Jurors in Caſes of Blood; nor ſhould thoſe of the other Court be unacquainted with the (*d*) *Tryals per Pais*, or the Law concerning Juries by *Niſi Prius*, &c. Reports of adjudg'd Caſes in the Circuits, where the different Cuſtoms of the ſeveral Counties are beſt canvaſs'd and prov'd, would be as beneficial to our

(*a*) St. 11. *Hen.* 4. cap. 3. (*b*) 8°. pret. 2 *s.* 6 *d.* (*c*) 8°. pret. 2 *s.* 6 *d.* (*d*) 8°. pret. 6 *s.*

Hiſto-

Historian (and, I presume, to the young Students of the Law) as those that are brought from any of the Courts in *Westminster-Hall*: And some (*a*) such have been lately publish'd, of Cases try'd at the Assizes at *York*, before sundry Judges of that Circuit.

The Office of a Justice of Peace began in the first Year of *Edward* the Third: Since which time there have been Quarterly Courts held before them, wherein the grand Juries of their Counties have enquir'd of all Traytors, Hereticks, Conventiclers, Thieves, Murderers, Money-Coiners, Riots, Assaults, *&c.* and those that appear guilty are by the said Justices committed to Prison, to be try'd at the Assizes next following. The Rolls or Records of these Sessions are (or should be) in the Custody of one of the principal Justices of the Peace and *Quorum*; who is appointed to that Office by the (*b* Lord Chancellor, and is usually styl'd *Custos Rotulorum*. The first design'd Directions for the right Executi- *Sessions.*

(*a*) *Joh. Clayton's* Reports 8°. pr. 1 *s.* 6 *d.* Vide & MSS. *R. Dodesworth*, in Bibl. Bodl. Vol. 1. (*b*) Vid. St. 37. Hen. 8. cap. 1. & 3. 4. Ed. 6. cap. 1.

on

on of the Juſtice's Office were Collected by Sir *Anthony Fitzherbert*, one of the Judges of the Common-Pleas; whoſe Book, together with what he wrote of ſome other Offices of Sheriffs, Bailiffs, Coroners, *&c.* has been ſeveral times publiſh'd, and is much enlarg'd by (*a*) *R. Crompton.* Beſides this, *W. Lambard*'s (*b*) *Eirenarcha* is the only Treatiſe on this Subject before the Death of Queen *Elizabeth*; ſince whoſe Reign *Fleetwood*, *Chamberlain*, *Sheppard*, *Dalton*, *Bond*, *Keble* and others, have been more Voluminous and better known. There are divers other inferiour Officers, who are to act by the Direction and Warrant of the Juſtices; a full Account and Knowledge whereof may be had from thoſe that have written about the Office and Duty of Conſtables, *&c.* as *W. Lambard*, *J. Layer*, *G. Meriton* and others.

London. The City of *London* has ſeveral Courts of Judicature; the chief whereof is the *Huſtings*, to which there lies an Appeal from that of the two Sheriffs.

(*a*) 4°. Fr. pret. 6 *s.* (*b*) 8°. Lond. 1581. 1592, *&c.*

This

This Name is evidently compounded of two *Saxon* Words (hur and ðing) which may be render'd either by *Domus Placitorum*, (*a*) or *Forum Contentioſum*; and, in the very ſame ſenſe, it was many Ages ſince uſed likewiſe at (*b*) *Lincoln*, *Wincheſter*, and *York*. The Records of this Court are kept in the Chamber of *London*; and for the greater eaſe of him that has occaſion to conſult them, are mark'd Alphabetically. The Lord Mayor holds alſo (by Preſcription) a Court of Conſcience, or Equity; the like to which ſeveral have been lately erected in other places, by Act of Parliament. After theſe, follow the Courts of the Mayor and Aldermen, Orphans, Common-Council, Ward-mote, Hall-mote, Chamberlain, Conſervator of the River, Coroner, *&c.* all which have their proper Clerks, Records and Regiſters. For the better Diſcovery of Grants and other Evidences (belonging to this City) being genuine, it ought to be known, that the Citizens (at, and a little after, the Conqueſt) were govern'd by *Port-*

(*a*) Inſtit. Par. 2. p. 322. (*b*) *Fleta*, Lib. 2. cap. 28.

greves;

greves; (*a*) and afterwards, by Charter from *Richard* the Firſt, by two Bayliffs. The ſame King, in the firſt Year of his Reign, appointed their firſt Mayor; who continu'd till the eighth Year of King *John*, from whom they had another. Two years after, that King granted them a Power of chooſing a Mayor *de ſeipſis*; which has continu'd to this day. There's an old Treatiſe (in *Latine* and *Saxon*) in Sir *John Cotton*'s (*b*) Library, which bears the Title of *Judicia Civitatis* London; which promiſes ſome ſpecial Remarks on the antient Juriſdiction of this famous City.

Counties Palatine.

Counties *Palatine* have all the *Jura Regalia* within themſelves; and of what extent thoſe are, as likewiſe what kind of Records are there to be ſought for, will be beſt learnt from the Words of the Charter granted by King *Edward* the Third, to his Son *John* of *Gaunt*, Duke of *Lancaſter*: (*c*) *Ut habeat infra Comitatum* Lancaſtriæ *Cancellariam ſuam, ac Brevia ſua ſub Sigillo ſuo pro*

(*a*) Inſtit. Par. 4. cap. 50. (*b*) *Claudius*, D. 2. (*c*) Rot. Pat. A°. 50. *Ed.* 3.

Officio

Officio Cancellarii, deputando, conſignando. Juſticiarios ſuos tam ad placita Coronæ, quàm ad quæcunque alia placita Communem Legem tangentia, tenenda, ac cognitiones eorundem, & quaſcunque Executiones per Brevia ſua & Miniſtros ſuos faciendas. The Biſhops of *Ely* have the like Royalties, within the Iſle of *Ely*; by Grant from *Henry* the Firſt, Founder of that Biſhoprick. The like had the Earls of *Pembroke*, in that County, till their Juriſdiction and Priviledges were taken away by (*a*) Act of Parliament; which alſo put an end to the ſame pretenſions of *Hexamſhire*, (*b*) giving the Sheriff of *Northumberland* Power to execute his Office there. But, omitting all the reſt, the Reader will beſt underſtand the true Conſtitution of theſe Palatinates from the State of that of *Durham*; which is thus given me by (*c*) an ingenious Perſon, and one that's perfectly acquainted with the antient Uſages and Records of that place. The County of *Durham*, he ſays, is a County *Palatine* by Preſcription, time out of mind, and not by Creation, or Grant

(*a*) 27. Hen. 8. cap. 26. (*b*) 14. *Eliz.* cap. 13. (*c*) *J. Kowel*, Dec. & Capit. *Dunelm.* Regiſtr.

within

within Memory; and extends from the middle of the River of *Tyne*, on the North, to the midſt of *Teeſe* on the South: The Shires alſo of *Norham*, *Holy Iſland*, and *Bedlington* (together with the Mannor of *Crake*, in the County of *York*) having antiently been, and ſtill continuing Members thereof. The Biſhops of this Dioceſe ſucceſſively (as well before, as ever ſince, the Conqueſt) have always been *Counts Palatine* within the foreſaid Limits; and, as ſuch, have held and enjoy'd divers Royalties and Juriſdictions, with the following Courts of Juſtice and Equity. 1. A Court of Chancery; wherein the Chancellor, Regiſter and Examiner, are all made by the Biſhop's Letters-Patents. 2. A Court of Pleas; which uſed to determine all Pleas of the Crown, as well as all Civil Rights in Actions Real, Perſonal and mixt: Wherein Commiſſions were given to the Juſtices in his own Name, and under his Seal, the Indictments running *contra pacem Domini Epiſcopi*; and Pardons were granted in the ſame Name and Manner. The (*z*) Act of Reſump-

(*z*) 27. *Hen.* 8. cap. 24.

tion

tion of Royal Franchiſes put an end to ſome of theſe Priviledges: But continu'd the Biſhop and his Temporal Chancellor (for the time being) perpetual Juſtices of the Peace for that County. This Honour is likewiſe ſtill retain'd, that even thoſe Commiſſions, Writs, &c. which run in the King's Name and Style, bear *Teſte* the Biſhop; who alſo appoints the Sheriff of the County, Under-Sheriff, County-Clerk, Gaoler, Clerk of the Crown, Prothonotary, Clerk of the Peace, Curſitor, &c. 3. A Court of Wards and Liveries, with an Eſcheator and Feodary; which continu'd till even the King's own Wardſhips were taken away by (a) Act of Parliament. 'Tis well known, that the Exciſe of Beer and Ale was ſetled on the Crown in lieu of theſe: And, in Recompence of the Biſhop's Loſs, the King was graciouſly pleas'd to releaſe to Him and his Succeſſors, (from and after the Deceaſe of the then Queen-Mother) the yearly Rent of eight hundred and eighty Pounds, which is ſtill di con-

(a) 12. *Car.* 2. cap. 24.

tinu'd, and ſtands diſcharg'd to the preſent Biſhop. 4. A Court of Admiralty; with a Vice-Admiral, Regiſter, Marſhal, or Water-Bayliff, with other Officers, who have all conſtantly acted therein, both on the Sea-Coaſts, and in the Rivers of the ſaid County. The Biſhops have alſo enjoy'd all Forfeitures and Profits incident to this Royalty, as Wrecks of the Sea, Anchorage, Beaconage, Warfage, Moorage, and other the like Advantages; in as ample a manner as the Kings of this Realm have had, in the other parts of their Dominions. They likewiſe antiently Array'd, Arm'd, and Equipp'd, all Land-Soldiers and Ships of War, by Writs and Commiſſions in their own Names, out of the Chancery at *Durham*; upon Notice or Command from the King, by Writ or Summons to that purpoſe. For the Proof of theſe, and many other Royal Priviledges belonging to this Palatinate, there are great Numbers of Records ſtill remaining; which have happily eſcaped the Fury of the laſt great Rebellion. Amongſt the Rolls of the Chancery, the moſt antient is that of *Richard de Bury*; who was

(*a*) con-

(a) consecrated Bishop in the year 1333. and dy'd in 1345. Some of their Grants and Charters are much elder, as, 1. *Carta* Willielmi *de* S. Karilefo *Episcopi* Dunelm. *de Libertatibus Ecclesiæ* Dun. (*Priori &c. & Conventui*) *concessis, per Consensum* Gregorii *Papæ &* Will. *Conquestoris*, Anno Regni 14°. 2. *Recordatio Marchiarum*, temp. Willielmi *Secundi*: Whereby the Metes and Bounds of the River *Tyne* are described, as then agreed on, and enjoy'd by the Earl of *Northumberland* on the North, and Bishop *Ranulphus* on the South. 3. *Carta*, Hen. 1. Ranulpho *Episcopo* Dunelmensi *Concessa, de Consuetudinibus in Aquis* S. Cuthberti *in Tina: Quas* Ranulphus *Episcopus diracionavit adversus* Northumbrenses, in *sua & Baronum suorum presentiâ.* The Original is in the Dean and Chapter's Treasury. 4. *Carta* Hen. 2. *Episcopo* Dunelm. *concessa, de Applicatione Navium ex parte suâ in Aquâ de* Tina, *tam libere, honorificè & quietè sicut Rex habet ex altera parte.*

(a) Angl. Sacr. Vol. 1. p. 765.

County-Court:

The Judges antiently appointed to preſide in the Sheriff's Courts were (*a*) *Epiſcopi, Comites, Vice-Domini, Vicarii, Centenarii, Aldermanni, Præfecti, Præpoſiti, Barones, Vavaſores, Tungrevii, & cæteri Terrarum Domini*: And the Cauſes tryable before them are ſuch as were proper for theſe Perſons to examine, *Agantur* (ſays the ſame Law) *primò debita veræ Chriſtianitatis Jura; ſecundo Regis placita; poſtremò cauſæ ſingulorum dignis ſatisfactionibus expleantur.* Neither the Courts nor the Cauſes are now ſo conſiderable as in former days, though that for the Tryal of Civil Diſputes is ſtill held (as this Law directs) once a Month, the *Turn* or County-Leet is kept only twice in the year, at *Eaſter* and *Michaelmas*. How the Sheriffs are to behave themſelves here and elſewhere, and what Furniture they can afford us for Hiſtory, may be ſeen at large in (*b*) *Dalton's Officium Vice-Comitum, J.* (*c*) *Wilkinſon's* Office and Authority of Coroners and Sheriffs, and *William Greenwood's* (*d*) Βουλευτήριον, or Treatiſe concerning *Country Judicatures*.

(*a*) LI. Hen. 1. cap. 7. Edit. *Twyſd.* p. 180, (*b*) Fol. pret. 16 *s.* (*c*) 8°. pret. 4 *s.* 6 *d.* (*d*) 8°. pr. 3 *s.* 6 *d.*

A *Court-Leet* or *View of Flank-Pledge* is held twice in the year by Stewards of Mannors, Mayors, Bayliffs and other Governours of Corporations; wherein Sureties of the Peace (*a*) were antiently given by every Suiter of twelve years old, by taking the Oath of Allegiance. It takes Preſentments of Murders, Riots, and other Miſdemeanours; Some whereof are in *Miſericordia Judicis*, and others tranſmitted to the Cogniſance of ſuperiour Courts. For the Methods in this, conſult *J.* (*b*) *Kitchin*'s Juriſdictions, and (*c*) *D. Jenkins*'s *Pacis conſultum*; as likewiſe *Rob. Powel*'s (*d*) Treatiſe of their Antiquity, Authority, Caſes, &c. (*e*) *W. Sheppard*'s Court-Keeper's Guide, and his (*f*) Survey of the County-Judicatures. Court-Leet.

In the *Magna Carta* of King *John* 'tis granted, *quòd faciemus ſummoneri Archiepiſcopos, Epiſcopos, Abbates, Comites & Majores Barones regni ſingulatim per Literas Noſtras.* Where 'tis to be obſerv'd, that theſe laſt Lords of Parliament are call'd *Barones Majores*, to di- Court-Baron.

(*a*) Inſtit. Par. 4. cap. 54. (*b*) 8°. pret. 6 *s.* (*c*) 8°. pr. 1 *s.* (*d*) 4°. pr. 2 *s.* 6 *d.* (*e*) pr. 1 *s.* 6 *d.* (*f*) 8°. pr. 1 *s.*

ſtinguiſh them from the *Minores*; who were only Lords of Mannors, and had Courts of their Freeholders, which to this day are call'd (*a*) *Curiæ Baroniarum.* 'Tis true, moſt of the Matters debated here are little pedling Debts and Treſpaſſes, and yet, where the Court-Rolls are carefully kept, much of the Faſhion and Humour of the Times is to be learn'd from them. Very remarkable was that Paſſage which was obſerv'd by (the famous Antiquary) *R. Dodsworth* in thoſe at *Wakefield*, where this Record was enter'd ſometime in the Reign of *Edward* the Firſt: (*b*) Franco Tyas *Miles tulit Actionem verſus* Germanum Mercer, *qui arreſtavit Equum* Willielmi Lepton *Armigeri ſui ad dedecus & damnum prædicti* Franci, *quia fuit ſine Armigero: Et prædictus* Franco *recuperavit C Solidos. Ideo* Germanus Mercer *in his Miſerecordia.*

Foreſt-Courts. The chief Judges in the *Foreſt-Courts*, are the *Juſticiarii Itinerantes*, or Juſtices in *Eyre*, whereof the one preſides in all Foreſts on the North of

(*a*) Inſtit. Par. 4. cap. 1. p. 49. (*b*) Vid. Seld. Tit. of Hon. p. 690.

Trent,

Trent, as the other does on the South. There are many particular Foreſt-Laws, which (with the famous *Carta de Foreſta*) are the Guides in theſe Judicatories: Amongſt which, that which bears the Title of (*a*) *Ordinatio Foreſtæ*, though it has conſtantly kept its place amongſt the Statute-Laws of this Realm, is look'd upon as an *Ordinance* only (*b*) *made by the King alone without Authority of Parliament.* Indeed, what Sir *Edward Coke* gives us in *Latine* is very different from what we have in our *Engliſh* Prints; where 'tis expreſly affirm'd to be the *Anſwer* given to a *Requeſt made by the great Men to our Lord the King in this Parliament:* Which, as I apprehend, the Cuſtom of thoſe days to have been, is all that's requiſite to the legal Formality of a true Act of Parliament. With theſe Laws, and with the Records of theſe Courts, our *Engliſh* Hiſtorian ought to be thoroughly acquainted; that he may be able to underſtand readily the Terms of *Viridarii*, *Agiſtatores*, *Regardatores*, *Gruarii*, *Boſci*, *Haiæ*, *Fugacia*, *Pannagium*, *Aſſer-*

(*a*) 33. Ed. 1. (*b*) Inſtit. Par. 4. cap. 73. p. 292.

tura, *Putura*, &c. which he must plentifully meet with in our old Historians and Law-Writers. The old Perambulations (*a*) of Forests, together with the Boundaries and extent of Neighbouring *Purlieus*, may be had amongst the Records of the Tower; where there are also several Rolls of Verdicts and Judgments, given in the Courts of the Justices *in Eyre*. The cutting of Timber for the King's Use, in any of his Majesties Forests most convenient for the present Occasions of the State, has been ordered by Commissions, either under the Great Seal, or Seal of the Exchequer; whereof many Precedents are in the keeping of the King's Remembrancer: And therein 'tis observable, that Exceptions have been usually made of such Trees as (by the Judges in any of the said Forest Courts) shall be thought necessary for the Coverture and Pawnage of the Deer. For the better understanding of the *Carta de Foresta*, it may be convenient to read with it *J. Manwood*'s Treatise of the (*b*) Laws of the Forest; wherein we have the Ori-

(*a*) Vid. St. 1. Ed. 3. cap. 1. (*b*) 4°. pret. 14 s.

ginal

ginal of the Word and Thing; its difference from a Chaſe, Park, and Warren; the proper Terms of Art thereunto belonging, &c. with ſome Statutes of the Foreſt not elſewhere printed. The *Swainmote*, or *Swanmote* (from the *Saxon* (*a*) word, ȝpæȝn, a Country-Clown, or Husbandman, and mot, or ȝemot, *Conventus*) is an inferiour Court of Freeholders within the Foreſt; which had a power to inquire into Tranſgreſſions, by empanelling Juries of Men of better Quality than this Etymology ſeems to intimate. What ſort of Records this Court afforded, appears alſo from the laſt Clauſe of their Commiſſion: (*b*) *Et ſic inquiſita veritate præſentationes illæ per communem concordiam & aſſenſum Miniſtrorum prædictorum roborentur & ſigillis ſuis ſigillentur.*

The chief part of the (*c*) Laws obſerv'd in the Court of *Aamiralty*, are thoſe of *Rhodes* and *Oleron*, whereof the former were long ſince incorporated into the *Roman* Civil Law, and the *Admiralty.*

(*a*) Vid. Reliq. *Spelm.* p 85. (*b*) Ordin. Foreſt. 34 Ed. 1. in Inſtit. Par. 4. p. 292. (*c*) D. *Chamberlain*, Not. Angl. Euit. 16. p. 174.

other

other were compiled at the direction of our great *Richard* the First, being collected into one Body, which (from that Isle in the Bay of *Aquitaine*, wherein they were made) bears the Name of *La Rool d' Oleron*. To these there were several excellent Constitutions added by *Edward* the Third, at *Quinborough*, in the Year 1375. If the Reader has a mind to see this Court in its Nonage, and before King *Richard* had finish'd its Rules, let him peruse that King's (*a*) *Carta de Statutis illorum qui per mare iturgrant*: Wherein Methods of Tryal and Execution are prescrib'd, which are very singular, and without all manner of Precedent. And, even now when 'tis better form'd, some of our *English* Lawyers will not allow it to be call'd a Court of Record; because, forsooth, if an (*b*) erroneous Sentence be given in that Court, there lies no Writ of Error in the Case, but only an Appeal: Which (as a late noble (*c*) Lord observ'd upon some other Contests betwixt these Gentlemen and those of the Admiralty) is not *speaking as we ordinary Men*

(*a*) *R. Hoveden*, p. 666. Edit. *Francof.* (*b*) Instit. Par. 4. cap. 22. p. 135. (*c*) D. of B's Speech in *Shirley's* Case.

do,

do, but a *making bold with the very Senſe and Language of the whole Nation.* It appears that the *Engliſh* Admirals have had a Judicature, as long as the *Engliſh* Kings themſelves have had a Sovereignty, in the *Britiſh* Ocean, and that was long ſince allow'd to be (*a*) *du temps dont il n'y a memoire du contrarie.* Out of the Hiſtorical Remains we have of their Proceedings (which we commonly call *Records*) the *Engliſh* Dominion over the four Seas (totally excluding our Neighbours, both *French* and *Dutch*, from fiſhing therein without our Licenſe) has been fairly made out by Mr. *Selden*, in his *Mare* (*b*) *Clauſum*; againſt all the Objections of *H. Grotius*, in his (*c*) *Mare Liberum*. 'Tis very plain, that when the Author penn'd this Book, he was not ſuch an inveterate Enemy to the Prerogative-Doctrine of Ship Money, as afterwards: For he profeſſedly aſſerts that, in the Defence of their Soveraignty at Sea, our Kings conſtantly practis'd the levying great Sums on their Subjects, without the Concurrence of their Parliaments. His

(*a*) Vid. Record. 22. Ed. 1. *De Superioritate Maris Angliæ*, &c. Inſtit. Par. 4. cap. 22. (*b*) Fol. Lond. 1635. (*c*) 8°. Ludg. Bat. 1618.

Au-

Authorities indeed are brought no lower than the Reign of *Henry* the Second: But, even ſo, the Service was reckon'd of that valuable kind, as that (by an expreſs Order of the King and Council) the Book was deliver'd to the Barons of the Exchequer, in open Court, to be (*a*) *by them laid up, as a moſt ineſtimable Jewel, amongſt the choice Records which concern'd the Crown.* 'Twas tranſlated into (*b*) *Engliſh* by *Marchamont Needham*, the ſcurrilous News-monger; who ſuppreſs'd the Epiſtle Dedicatory, interlarded it with ſeveral Treaſonable Comments and falſe Gloſſes of his own, and added a few old Evidences which were ſuppos'd to be communicated to him by *J. Bradſhaw* of infamous Memory. After the Reſtoration of King *Charles* the Second, this Edition was reviſed and (*c*) corrected by *J. H.* Gentleman; who did the Learned Author that Juſtice after his Death, which he wanted the Courage to demand in his Lifetime. About the ſame time that the *Mare Clauſum* was penning, Sir *John Borough* (Keeper of the Records in the Tower

(*a*) Ath. Oxon. Vol. 2. p. 109. (*b*) Fol. Lond. 1652. (*c*) Fol. Lond. 1662.

of

of *London*, and ſoon after *Garter* King at Arms) was buſy'd on the ſame Subject: But he ſeems to have ſuppreſs'd his Collections, as needleſs, upon the appearance of that famous Work. However, ſome of this Gentleman's Friends (almoſt ten years after his Death) did him ſo much right, as to ſend them alſo abroad; which was done under the Title of (*a*) *The Sovereignty of the* Britiſh *Seas prov'd by Records, Hiſtory and the Municipal Laws of the Kingdom.* That the Common-Law took Cognizance of Treſpaſſes committed at Sea, in the twenty-fifth year of *Edward* the Firſt's Reign, (*b*) Mr. *Selden* thinks very probable from an old MS. Report which he had of that Year: And the like he believes may be coucluded of the times of *Henry* the Third, from a torn Roll of the forty-ſeventh of that King. He mentions alſo a Manuſcript Treatiſe (ſometime lent him by Sir *Walter Raleigh*) bearing the Title of *De l' Office del Admiralty*; wherein the Indictments and Tryals ran in the ſame Form as is now uſed at Common-Law:

(*a*) 12° Lond. 1651. (*b*) Not. in *Forteſc.* cap. 32.

But

But he confeſſes the Book ſeem'd rather a Collection of *Adverſaria* for a deſign'd Work on that Subject, than a finiſh'd piece. He gueſſes it might be penn'd about *Henry* the Sixth's Reign; and commends it for preſerving ſeveral Conſtitutions (of *Henry* the Firſt, *Richard* the Firſt, King *John*, and *Edward* the Firſt) relating to the Admiralty, which were hardly to be had elſewhere. The Juriſdiction of the Court is aſſerted, againſt Sir *Edward Coke*'s (*a*) Articles, by (*b*) Dr. *R. Zouch*, who, ſometime before and after the Reſtoration, was Judge of it himſelf. To which ought to be added his (*c*) *Deſcriptio Juris Maritimi*, and Dr. *Godolphin*'s (*d*) *View of the Admiral-Juriſdiction*. The Practice of it is given by (*e*) *Fr. Clark*. The Affairs of Sea-Commerce are well handled by *Ch. Molley*, in his Book (*f*) *de Jure Maritimo & Navali*, which has been ſo well approv'd as to admit of ſeveral Editions. Laſtly, A ſhort Account of almoſt all the foremention'd Treatiſes, with ſome other valuable Pieces are to be had in the *Conſuetudo* (*g*) or *Lex*

(*a*) Inſtit. Par. 4. cap. 22. (*b*) 8°. Lond. 1663. (*c*) 4°. Oxon. 1640. (*d*) 8°. pr. 2 *s*. 6 *d*. (*e*) 8°. pr. 1 *s*. (*f*) 8°. pr. 5 *s*. (*g*) Fol. pr. 24 *s*.

Mer-

Mercatoria; wherein are likewiſe the neceſſary Inſtructions that relate to the right Underſtanding of Sea-Laws, Merchant-Accounts, and the other Eſſentials of Traffick. To theſe muſt be added an Enquiry into the Navy-Office; and the Abſtracts of Accounts, Liſts of the old and new Shipping, from the ſeveral Yards at *Deptford*, *Woolwich*, *Chatham*, &c. all which may be ſeen in the Cuſtody of the Secretary of the Admiralty.

For a juſt Eſtimate of the encreaſe of the Military Force in *England*, there are ſeveral Repoſitories of Papers and Rolls wherewith our Hiſtorian ſhould be acquainted. The Lieutenants and Deputy Lieutenants of our Counties have their Muſter-Maſters and others that keep ſtated Accounts of all that's tranſacted and order'd amongſt them. But, above all, the Office of Ordnance will afford him the beſt acquaintance with the Proviſions of War, as being the grand Magazine of this Kingdom. All Orders and Inſtructions for the Government of this Office (as likewiſe all Patents and Grants to the many Officers, Artificers, Attendants and Labourers, *Ordnance.*

bourers; with the Quarter-Books for Salaries, Liegers of Receipts and Returns of His Majeſty's Stores, *&c.*) are in the Cuſtody of the *Clerk of the Ordnance*; as thoſe for the giving out of any Proviſions or Stores, either at the Tower or any other of the King's Magazines, are under the care of the *Clerk of the Deliveries.*

Staple, &c. There are ſome other Courts, Communities and Corporations, which have their proper Regiſters; and ought not to be ſlighted. The Court of *Stanneries* has had mighty Priviledges for all ſuch as are (*a*) actual Workers in the Mines of *Cornwal*; and that of the (*b*) *Cinque-Ports* has a Juriſdiction which extends to all manner of Civil Cauſes. But theſe are ſo particular and purely local, that we can only juſt point at them. The Court of the *Mayor of the Staple* (*c*) was heretofore kept at *Bruges*, *Calais*, *Antwerp*, *Middleburgh*, &c. and afterwards at *Weſtminſter*, its Juriſdiction reaching from *Temple-Bar* to *Tuttle-fields*. In it the Mayor and two Conſtables gave Sentence according to (*d*) Law-Merchant; and

(*a*) Vid. Inſtit. Par. 4. cap. 45. (*b*) Ibid. cap. 41. (*c*) Ibid. cap. 45. (*d*) Vid. St. 27. *Ed.* 3. cap. 21.

the

the chief Matters under debate were the five Staple Commodities of this Kingdom, Wool, Wool-fels, Leather, Lead and Tynne. As the Proceedings in this, and that which our Lawyers call *Pæpoudrous*, are Summary, and ſuch as are moſt agreeable to the haſt that Merchants are in, both when they make their Contracts, and ſue for the Performances, ſo all the Regiſters that we can expect of them, muſt look like Minutes more than Records. What Remains there are of either of 'em, are to be ſought in thoſe Corporations and Market-Towns, where ſuch Courts have been kept: But, of late years, the Merchant Pleas have been uſually try'd in the *Mayor's Court* of the place where the Actions have happen'd.

CHAP. V.

Of our Law-Writers, Year-Books, and Reports.

BEfore one attempt the peruſal of our antient Law-writers, 'twill be highly convenient to have a general *Idea* of the Common-Law it ſelf, the chief Subject of all their Tracts: And this perhaps cannot be had more readily than from that Methodical Syſtem which is well known by the Name of *Finch*'s *Law*. 'Twas written by *Henry Finch*, a young Counſellor of *Grey's* Inn; whom King *James* the Firſt made afterwards one of his own Serjeants, and then a Knight. It was firſt publiſh'd in *French*, under the Title of (*a*) *Nomotechnia*; *ceſtaſcavoir, un deſcription del common Leys d' Angleterre*, &c. But, ſome time after, the Author himſelf tranſlated it into *Engliſh*; in which

(*a*) Fol. Lond. 1613.

Lan

Language it has had a great many (*a*) Editions, and is ſtill in good Credit and Repute. Out of it is extracted, or ſtoln, another ſmall Treatiſe which is call'd a (*b*) *Summary of the Common-Law of* England.

If the *Cuſtumier de* (*c*) *Normandy* were indeed (as ſome have (*d*) aſſerted) an antient Formulary drawn up by the firſt Princes of that Country, and brought in hither by the Conqueror, it might juſtly challenge the firſt Rank in this Catalogue of Law-Books: But there are many particulars in it which will not ſuffer us to allow it ſo great an Age. Some are of Opinion that it was written in the Reign of *Henry* the Firſt; which they pretend to prove from *Sequerius*'s Affirming, that this King eſtabliſh'd the *Engliſh* Laws in *Normandy*. He might poſſibly introduce ſome of our Sanctions into that Country: But that this very *Codex* of 'em was drawn up in his time ſeems not ſo probable. There's one Chapter in it of *Nampes*, or *Diſtreſſes*, wherein 'tis decreed, that none ſhall bring his Acti-

Cuſtumier de Normandy.

(*a*) 8°. Lond. 1613, 1636, 1661, &c. (*b*) 8°. Lond. 1614. (*c*) Fol. Fr pret. 20 s. (*d*) See *Whitlock*'s Speech in Par. *Argum. Anti-Norm.* p. 115.

on upon any Seiſure, ſave only from the time of the Coronation of King *Richard*; which muſt be our *Richard* the Firſt, ſince no *French* King had that Name: Nay, the Author (*a*) himſelf intimates, that he compiled the Work about forty Years after that King's Acceſs to the Throne. There are in it a great many of the Laws of *Edward* the Confeſſor, and other *Saxon* Kings; but mixt with many *Norman* Cuſtoms that are no way related to them. Several Paragraphs are (almoſt *Verbatim*) tranſlated out of *Glanvil*; yet ſome of his Courts of Juſtice, Original Writs, &c. are not ſo much as named. Sir *Edward* (*b*) *Coke* tells his Reader, that he will frequently meet with this Book cited in his *Inſtitutes*, where it agrees with the Laws of *England*, and ſometimes where it diſagrees, *ex diametro*.

Henry II.] 'Tis ſaid (*c*) that *Ralph de Meſchines* (E of *Cheſter*, in *Henry* the Firſt's time, wrote a Book of the Common-Law of this Kingdom; and the ſame (*d*) Au

(*a*) Vid. Cuſtum. cap. 22. fol. 29. & cap. 112. (*b*) Inſtit. Par. 2. p. 5. (*c*) *Coke*'s Reports, Vol. 8. Procem. (*d*) Ibid. Vol. 3. in Procem. & *J. Bale*, Cen. 3. cap. 26.

thorit

thority assures, that King *Henry* the Second himself did the like. There is indeed, a Volume in (*a*) Sir *John Cotton*'s Library, which is thus inscrib'd, *Consuetudines* Angliæ, *quæ proponebantur* Tho. Becket *tempore* Henrici *Secundi*; *cum Constitutionibus ejusdem Regis renovatis in* Normannia: Which perhaps has given occasion for this Report. On the contrary, 'tis well known that this King was a great encourager of Archbishop *Theobald* and his Civilians, whom his Predecessor had endeavour'd to suppress: Insomuch, that one of that Primate's Domesticks tells us, that 'twas the fashion of the Family (betwixt Prayers and Dinner) to have publick Mootings in the Common-Hall, where (*b*) *Omnes Quæstiones Regni Nodosæ referuntur ad nos.* And his Example had that Influence upon his two Sons and Successors (King *John* and *Richard* the First) that they gave the same Protection to the Professors of the Civil Law; ordering that this should be joyn'd with the Common in all Courts of Judicature within this Realm, which

(*a*) *Titus*, A. 13. (*b*) *Pet. Blesf.* apud *J. Seld.* Dissert. *ad* Fletam. cap. 8. Sect. 1.

was accordingly put in (*a*) Practice all their Reigns. Yet ſome will not be ſatisfi'd but he was the firſt great Patron and Poliſher of the Common-Law, Henry *the Second* (ſays a florid (*b*) Gentleman) *was the firſt* Mæcenas *ſince the Conqueſt that brought on the Spring-time of a ſetled Common-Weal; and therefore left this fair Teſtimony by putting forth the Primroſe of* Engliſh *Laws, under the Name of* Glanvil, *letting all Men know that thenceforth* England *would no more vale it ſelf in an unknown Law, but explain it ſelf to the World to be a Regular Government.* And as King *Henry* thinks fit (in this place) to call himſelf by the Name of *Glanvil*, ſo we ſhall find that elſewhere *Glanvil* goes by the Name of *Henry* the Second, ſince one of the MS. (*c*) Copies of his Book bears the Title of that King's Laws.

R. de Glanvil. But, let us enquire how our Hiſtorians are like to determine this Controverſie. *Eodem anno* (ſays *Hoveden* (*d*) who was his Contemporary) Henricus

(*a*) *J. Seld.* Ibid (*b*) *Nat. Bacon*, Hiſt. Diſc. Par. 1. p. 169. (*c*) Bibl. Cot. *Claudius*, D. 2. (*d*) Ad Annum, 1180.

Rex

Rex Angliæ *Pater* (to diſtinguiſh him from his Son of the ſame Name, whom he had caus'd to be Crown'd King) *conſtituit* Ranulfum de Glanvilla *ſummum Juſticiarium totius* Angliæ; *cujus ſapientiâ conditæ ſunt leges ſubſcriptæ quas* Anglicanas *vocamus*. After which he proceeds to give us the Law of *Edward* the Confeſſor, and *William* the Firſt; as if theſe had never been brought into any regular Form before his time. *John Bale* very gravely tells us, that he was ſent by King *Henry* to the Siege of *Damiata* in *Egypt*, and that he did mighty Feats in that Expedition: But the good Man miſtakes, in that ſhort Story, *Henry* the Third for *Henry* the Second; and *Ralph de Meſchines* (the Second) Earl of *Cheſter* for *Ralph de Glanvil*. The *Mirror* (*a*) repreſents this Chief Juſtice as an able Lawyer, affirming, that he was the Inventor of the famous Writ of *Aſſize*, or *de Novel Diſſeiſin*; though others (*b*) believe it to be more antient. The Book, that now carries his Name, was (*c*) firſt publiſh'd by the perſwaſion and pro-

(*a*) Cap. 2. Sect. 25. (*b*) Inſtit. Par. 4. cap. 27. (*c*) 8°. Lond. 1554.

curement of Sir *William Stanford*, and has ſince had (*a*) ſeveral Editions. In all theſe it has kept the ſame Title, which runs thus: *Tractatus de legibus & conſuetudinibus Regni* Angliæ, *tempore Regis Henrici ſecundi Compoſitus, Juſtitiæ gubernacula tenente illuſtri viro* Ranulpho de Glanvilla, *Juris Regni & antiquarum conſuetudinum eo tempore peritiſſimo. Et illas ſolum leges continet & conſuetudines, ſecundum quas placitatur in curia Regis ad Scaccarium & coram Juſticiis ubicunque fuerint.* From theſe laſt Words ſome (*b*) have concluded, that the Court of Exchequer did antiently take cognizance of all manner of Common-Pleas; whereas a little pointing of the Words will make theſe three diſtinct Courts. 1. *In Curia Regis.* 2. *Ad Scaccarium.* 3. *Coram Juſticiis ubicunque fuerint.* It has alſo been concluded from this Title, that the firſt Publiſhers, or Copyers of the Book, look'd upon it as rather penn'd in the time of that Judge, than by himſelf, which may poſſibly appear likewiſe from what I ſhall hereafter advance, in treating of

(*a*) 8°. Ibid. 1557, 1604, *&c.* (*b*) Vid. Inſtit. Par. 4. cap. 8.

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the *Regiam Majeſtatem* of *Scotland*. For the preſent, we are to ſuppoſe him to be the Author: And I ſhall only obſerve, that whoever compares this Book, with that antient Repoſitory of the Common-Law of our Neighbouring Kingdom, muſt conclude, that there is no ſuch hideous diſtance betwixt our Law and theirs, as the Lord Chief Juſtice *Coke* and Attorney General *Bacon* (in the beginning of King *James* the Firſt's Reign) repreſented the Matter; but that, if the ſecret Reaſons of theſe Gentlemen againſt making them One had not been ſtronger than thoſe they publiſh'd, *Britannia* (*a*) might have eaſily and readily had as good a Body of Law as either *Anglia* or *Scotia*. The whole Work is divided into fourteen Books, treating of, 1. Pleas and Eſſoins in the Court of King's-Bench. 2. Tryals by Combate and the grand Aſſize. 3. Warranty. 4. Advowſon of Churches. 5. Naturalization and Freedom. 6. Dowry. 7. Baſtardy and Wardſhip. 8. Fines. 9. Homage, with other Services, and Pur-

(*a*) See *Coke*'s Inſtit. Par. 4. cap. 75. and Sir *Francis Bacon*'s three Speeches.

preſtures,

preſtures, or Encroachments. 10. Debts and Contracts. 11. Attorneys. 12. Writs of Right and Prohibition. 13. Recognizances and Diſſeiſins. 14. Pleas of the Crown: In all which we have the Forms of ſuch Writs as were then (and are moſtly ſtill) in Uſe, upon all the ſeveral Occaſions there treated on. When Mr. *Selden* wrote his *Titles of Honour*, he queſtion'd whether this Book was rightly father'd: For, having occaſion to cite a Paſſage out of it, he does it with an Expreſſion full of Diffidence as to its Authority, (*a*) *as the Words are in the Book attributed to* Glanvil. And ſurely, whether he be the true or only reputed Author, may be ſtill a Query with us; ſince it was ſo to him, who could want no Light that was any where to be had in this Matter. *I know*, ſays he (*b*) elſewhere, *the Authority of that Treatiſe is ſuſpected; and ſome of the beſt and antienteſt Copies having the Name of* E. de N. (*which I have heard, from diligent Searchers in this kind of Learning, affirm'd to have been ſometimes* E. de Narbrough, *and not* R. de

(*a*) Tit. of Hon. p. 649. (*b*) Juriſ. of Teſt. Par. 1. cap. 5.

Glan-

Glanville) *it has been thought to be anothers Work, and alſo of later time: But, as on the one ſide, I dare not be confident that it is* Glanvil's, *ſo I make little queſtion that it is as antient as his time, if not his Work. The Teſts of the Precedents of Writs under his Name, the Language (eſpecially the Name of* Juſtitia *always for that which we now, from antient time, call* Juſtitiarius; *and* Juſtitia *was ſo uſed in Writers under* Henry *the Second) and the Law deliver'd in it taſteth not of any later Age.*

We are not ſo much in the dark about Maſter *John Bracton*: Whom all agree to have been a (*a*) Judge Itinerant in the latter end of *Henry* the Third's Reign, (as likewiſe, ſay ſome, (*b*) in the beginning of that of *Edward* the Firſt) and the undoubted Author of the Book that bears his Name. This indeed, is variouſly written in the Records that come neareſt his own Time; where we have him call'd *Bratton*, *Breton*, *Bretton*, *Briton*, *Britton*, and *Bryćton*. He ſeems to have given it (*c*) him- *J. Bracton.*

(*a*) Orig. Jurid. fol. 56. (*b*) Dr. *Brady*, in Præfat. ad Hiſt. Angl. (*c*) Edit. 1569. lib. 4 fol. 188. *b.*

ſelf

ſelf with ſome exactneſs, which inclin'd the Publiſhers of his Book to call him *Bracton* with a good aſſurance: But, even in that Paſſage, 'tis variouſly penn'd in moſt of the (*a*) Manuſcripts. Though we have now ſeveral (*b*) Editions of this Work, 'twas a good while before 'twas printed; and the MS. Copies were ſo many, that it was no eaſie task to compile a genuine Text out of any, or all of 'em. Some learned Perſons had loaded their Books with Marginal Notes, and ſome with interlineary Remarks; which, by the careleſsneſs of Tranſcribers, were afterwards admitted as part of the Author's own Diſcourſe. It was hard for one Man to ſtruggle with theſe Difficulties, and to be ſo perfect a Maſter of *Bracton*'s Style, as always to diſtinguiſh what was truly of his own Compoſure, from what was only (through Ignorance, or Inadvertency) father'd on him; and therefore many worthy Profeſſors of the Law gave their Aſſiſtance towards the ſetting forward and finiſhing ſo deſirable a Work. By their kind clubbing of their

(*a*) Vid. *J. Seld.* Diſſert. ad *Flet.* cap. 2. Sect. 1.
(*b*) Fol. Lond. 1569, 1640, *&c.*

Pains

Pains and Parts, this truly venerable *Code* of our antient Common-Law was publiſh'd in as correct a manner as was poſſible; and has ever ſince had an eſteem anſwerable to its real Deſerts and Value. It conſiſts of five Books; which begin with the ſeveral legal ways of procuring of Properties; and proceed to thoſe of the juſt maintaining or recovering of them. The Method is Natural, and very conformable to that of the great Emperor *Juſtinian*; whoſe Matter is alſo very frequently adhered to, and his Laws quoted (ſometimes *in ipſiſſimis verbis*) as familiarly as if they were part of the known Common-Law of this Kingdom. On every Head we have an interſpers'd Regiſter of proper Writs, and Reports of adjudg'd Caſes in both Benches; as alſo of ſuch as have been try'd before the Judges *in Eyre*, *Aſſize*, &c. The Author muſt be pardon'd his eaſie Admiſſion of the Pope's Supremacy, and his ſometimes Naturalizing the Canon as well as Civil-Law, when we conſider the time wherein he wrote: That it was ſoon after King *John* had made a formal Conveyance of his Realm to the See of *Rome*, and when the greateſt part of *Europe* was

was entirely under its uſurp'd Dominion. The Paſſages that ſavour ſtrong of the Iniquity and Vaſſalage of thoſe unhappy Days are not many; and there is that diſagreeable Obliquity in them, from the other continu'd Deſcription of our true *Engliſh* Government, that they are readily diſcern'd to be preternatural and Monſtrous. Some Miſtakes he made in his (*a*) Account of Parliamentary Proceedings in the twenty'th (it ſhould be the eighteenth) year of *Henry* the Third, are corrected by a (*b*) learned Pen; eſpecially his miſreciting the Names of the Barons, *&c.* In many places whole Sentences are perfectly tranſcrib'd out of *Glanvil.*

Fleta. Once more, we are to return to our Shades: For who was the Author of that Methodical and learned Treatiſe which bears the Name of *Fleta* is not known, nor indeed hardly ſo much as gueſs'd at. 'Tis plain, that he wrote in the Reign of King *Edward*, of whom he ſays many mighty things in his Preface: But which of our firſt three *Ed-*

(*a*) Cap. 19. fol. 417. *a.* Sect. 2. (*b*) *Seld.* Tit. of Hon. p. 597, 598.

wards

wards he means, will admit of ſome Diſpute. There's one Paſſage in the (*a*) Book, which ſeems to intimate, that he wrote either in the days of the Second or Third: *Qui receperint debita Regis, vel partem debiti, & debita illa non acquietaverint tam de tempore Regis* E. *Patris Regis, quàm de tempore præſenti.* Thus our Printed Books, in both Editions, give the Words; and herein they are acknowledg'd to agree with the Manuſcript from which they were publiſh'd. But even that Copy it ſelf is full of Literal Faults, and is ſuppos'd (by ſeveral Blanks in it, left for Words, and ſometimes whole Sentences) to have been taken by an unskillful Scribe, and a good while after the Author's own Time. It's therefore not improbable that the Tranſcriber miſtook *E.* for *H*, or elſe, that, writing his Copy in one of the two latter Reigns, and being over-wiſe, he took upon him to vary the Story, ſo as to ſuit his own Days: For 'tis impoſſible that ſuch a Writer, in either of the two ſuppos'd Reigns, ſhould overlook

(*a*) Lib. 1. cap. 20. Sect. 59.

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the many Famous Statutes that were enacted by those Kings, and would have been so much to his purpose on several occasions. Besides, the Passage before mention'd, refers to part of a (*a*) Statute of *Edward* the First; which is punctually repeated in (*b*) another part of this Treatise, as what had been newly pass'd into a Law by the Prince then reigning. He quotes also the Statute of (*c*) *Acton-Burnel*, as newly (*d*) enacted, *in Parliamento nuper habito*: And he speaks of the Priviledges of the (*e*) Knights Templars, as then in being, who ('tis well known) were aboliſh'd in the beginning of *Edward* the Second's Reign. The Character that he gives the then Ruling King (in his Preface) is what can never fit *Edward* the Second: Though, it must be confess'd, no great weight is to be laid on this Argument; since the like, and in almost the very same words, is given by *Glanvil* to our King *Henry* the Second, and by the *Scotch* Author of the *Regiam Majestatem* to their King *David*

(*a*) St. Westm. 1. A°. 3. *Ed.* 1. cap. 19. (*b*) Lib. 2. cap. 33. (*c*) An. 13. *Ed.* 1. (*d*) Lib. 2. cap. 64. (*e*) Lib. 2. cap. 50. Sect. 16.

the

the First. These, and some other Reasons, which I shall not now stay to repeat, prevail'd with Mr. *Selden* (*a*) to fix the time of this Author in the Reign of *Edward* the First; contrary to the Opinions of (*b*) Sir *Edward Coke* and (*c*) Dr. *Cowel*, who are verily perswaded that he wrote either in the latter end of *Edward* the Second, or in the beginning of *Edward* the Third. The Author himself acquaints us, in his Preface, that the Reason of his Book's bearing the Title of *Fleta*, was because 'twas penn'd in the Prison of that Name: And so, in our time, Sir *John Pettus* was pleas'd to give some of his Labours (in the same place) the Inscription of *Fleta Minor*, though treating on a quite different Subject. In the Year 1289. the King imprison'd *Tho. de Weylond*, Chief Justice, and several other Judges for foul Practices. The (*d*) Chronicles indeed say, they were committed to the *Tower*: But the *Fleet* being, even in those days, a Prison for Delinquents of Note and Quality, 'tis

(*a*) Differt. ad *Flet.* cap. 10. (*b*) Pref. to Rep. lib. 8. (*c*) Interp. voce *Fleta*. (*d*) *Holingshead* & *Stow*, ad an. 1289.

probable ſome of 'em might be ſent thither. In his firſt Book he inſiſts chiefly upon Pleas of the Crown; in the ſecond he gives a moſt full and curious Account of all the Officers of the King's Houſhold, with many other Particulars that exceedingly illuſtrate the Story of thoſe Times; and in the Four following he ſhews the then Practice of our Courts of Judicature, the Forms of Writs, Explication of Law-Terms, &c. He ſometimes tranſcribes the very words of *Bracton*; and elſewhere jumps with (one of *Bracton*'s Epitomizers) *Gilbert de Thornton*. There's one peice of Hiſtory in his Book, which will want the Authority of ſome others to ſupport it. 'Tis the Account which it gives (*a*) of a Proviſion made in a general Congreſs of the Chriſtian Princes at *Montpelier* in the Fourth Year of *Edward* the Firſt's Reign, which obliges them to a Revocation of all Grants made of their Crown-Lands, and ancient Demeſns; a Doctrine which he (*b*) elſewhere maintains for good *Engliſh* Law, however contrary to the known Practice of

(*a*) Lib. 3. cap. 6. Sect. 3. (*b*) Lib. 1. cap. 8.

both

both former and more modern Times. And indeed there was little occaſion for ſuch a National Compact, if other Kingdoms had the ſame Notion of the Nature of the *ancient Demeſne* of the Crown (or *Terra Regis*, as *Domeſday* calls it) which is ſaid to have (*a*) prevailed in ours, that it was *Sacrum Patrimonium*, and therefore the ſame Crime to leſſen or embezzle it as to violate the Rights, or alienate the Poſſeſſions, of God and his Church. We might probably be better inſtructed in this particular, were the Diſcourſe publiſh'd which was written by (*b*) Sir *Anthony Brown* (one of our Learned Judges in the Reigns of Queen *Mary* and Queen *Elizabeth*) upon *certain Points touching the Inheritance of the Crown*; tho the greateſt part of it ſeems to relate to the Nature of the Succeſſion, and deſign'd to aſſert the Right of *Mary* Queen of *Scots*. The *Fleta* was happily ſecured to us, amongſt many other Valuable Monuments of the like kind, by the incomparable Mr. *Selden*,

(*a*) Vid. Reliq. *Spelm.* p. 57. (*b*) Vid. Ath. Oxon. lib. 1. p. 119. & 148, 149.

who found it in the (a) *Cottonian* Library, in a hand as old as the Author's own Time, and assisted in the making it publick. He (b) says indeed, that it was transcribed for the Press by such unskilful *Amanuenses* as the Stationer employ'd; and that, upon this Score, it was publish'd in a more slovenly Dress than he could have wish'd. But ought not we much more to complain, that a (c) Second Edition has not corrected the Faults which he so long since lamented, and had mark'd out to us? 'Tis true, the impertinent Marginal Notes are remov'd; but the Abbreviations still continue, and the *Fet Assoir* to this day remains as part of the Text.

G. de Thornton. We have before hinted, that *Bracton*'s more Voluminous Book was Epitomiz'd by *Gilbert de Thornton*, who was (d) Chief Justice towards the latter End of *Edward* the First's Reign. Mr. *Selden* (e) met with a MS. Copy of this Treatise (nor could he ever hear of

(a) *Julius*, B. 8. (b) Dissert. in *Flet.* cap. 1. §. 1. (c) 4°. Lond. 1685. (d) Vid. *Dugd.* Summon. A°. 23. E. 1. pag. 9. (e) Dissert. ad *Flet.* cap. 2. §. 1. & 4.

any

any other) in the Lord *Burghley's* Library; in the Title whereof was this Account of the Book and its Author: *Incipit Summa de Legibus & Conſuetudinibus* Angliæ *à Magiſtro* Henrico de Bryctona *compoſita tempore* Henrici *filii Regis* Johannis, *quam quidem Summam Dominus* Gilbertus de Thornton, *tunc Capitalis Juſtic' Domini Regis in* Angl. *ſecundum Statuta & Leges tunc uſitatas, ad utilitatem Poſterorum diligenti Studio poſt modum abbreviavit ſub Compendio, anno Regni* Edwardi *filii Regis* Henr' *Vicesimo. Et ipſe idem Dominus* Gilbertus *tempore illo Scientiâ, bonitate & Manſuetudine, floruit eleganter.* This is not ſo to be underſtood as if the Epitomizer had intermix'd the Statutes made after *Bracton's* time, as *Breton* did afterwards; but that he ſo model'd this Abſtract of the Common-Law, that it might be moſt uſeful in explaining preſent and future Acts of Parliament. He frequently quits *Bracton's* Method, and makes uſe of one which looks more confuſed: As may beſt appear by the following Catalogue of the Eight Parts of his Book. 1. Of Perſons and Things, Grants and Confirmations. 2. Actions, Bonds and Penalties; with the

Power of Judges Itinerant and others. 3. Criminal Matters, Murder, Appeals and Felony. 4. Unlawful Seiſures and Diſſeiſures. 5. Common Paſturage, Aſſiſe of *Mordanceſtre*, Damages and Attaints. 6. Writs of Right and Appearance, and of Eſſoigns. 7. Demurrers and Prohibitions; Baſtardy and Inheritances. 8. Homage and Relief; with Settlements upon Marriage and Dowries. Theſe Parts were ſubdivided into two hundred and twelve Chapters, which is near a Third ſhort of the Number of thoſe in the Printed *Bracton*: But ſeveral of theſe are loſt out of that Manuſcript, and we can hardly hope to meet with another that will ſupply them.

R. de Hengham. Sir *Ralph de Hengham* was Chief Juſtice of the King's Bench at the Parliament which enacted the Statute (*a*) *de Bigamis*. In the ſixteenth year of King *Edward* the Firſt he was (*b*) remov'd and fined Seven Thouſand Pounds, but was afterwards reſtor'd to favour, and made Chief Juſtice of the Common-Pleas. In

(*a*) St. 4. Ed. 1. Vid. Inſtit. Par. 2. p. 267. (*b*) *Seld.* in Præfat. ad *Hengh.* M.

this

this Station there's the Proceſs of a Cauſe (*a*) try'd before him, and his Fellow-Juſtices, in the thirty third year of that King: About which time Sir *Edward Coke* (*b*) obſerv'd him to be call'd, in one Record, *Roger de Hegham*. But that learned Man is undoubtedly miſtaken; ſince it appears that ſoon after (in the firſt (*c*) year of *Edward* the ſecond) there was another Judge of this latter Name who ſate on the ſame Bench with Sir *Ralph*. His *Summs* have always paſs'd under the Titles of *Hengham magna* and *Parva*; and have both the ſame common Subject, treating of the antient (and now obſolete) Forms of Pleading in *Eſſoins* and *Defaults*. They were long ſince tranſlated into *Engliſh*: But that being done in the Language of *Edward* the Second or Third's time, it was thought moſt adviſeable to Print them in their Original *Latine*. This was done by *Mr. Selden*, who Publiſh'd them (*d*) with *Fortеſcue*, adding ſome few Notes of his own in *Engliſh*. The

(*a*) Kennet's Paroch. Antiq. p. 351. (*b*) Inſtit. Par. 2. p. 142. & 220. (*c*) Vid. D. *W. Dugd.* Summon. p. 60. 62. 64. (*d*) 8°. Lond. 1616.

Bookſeller, who (*a*) reprinted the laſt mention'd Author, gave us alſo a new Edition of *Hengham*, but diſſembled the Date in the Title Page; pretending that this Part of his Book was the old one of 1616. However, his heedleſs Printing of the Notes, as he there found them, diſcovers the cheat: For they do not anſwer to the Pages in this ſtoln Edition; but confound and perplex the Reader, inſtead of being rightly ſerviceable. There are many remarkable Forms and Rules in theſe *Summs*, which are omitted by *Bracton* on the ſame Heads; and yet 'tis thought we want a conſiderable ſhare of the Author's whole Work, none of the *MS.* Copies that were to be had being perfect.

MSS. Ed. 1. Beſides theſe there are a great many more Treatiſes on Matters of Law, which were penn'd in the days of *Edward* the Firſt; wherein the Bar-Practice began indeed firſt to Flouriſh. Theſe, tho' not ſo very conducing to our Hiſtorian's Purpoſe as the former,

(*a*) 8°. Ibid. 1660.

are

are worth the mentioning; which ſhall be done in a Method ſomewhat different from that wherein (a) Sir *William Dugdale* has given them.

Theſe (with thoſe that follow) are all mention'd in an old Parchment-Roll in *Cotton's* Library; but he knows not where they are now to be had.

1. *Speculum Juſticiariorum.*
2. *Examen Cartarum.*
3. *Curia Baronis.*
4. *Aſſiſa in* London, *de muris & Stillicidiis.*
5. *De Narrando.*
6. *Caſus qui tenet locum ſecundùm Leges Angliæ.*
7. *De Divortio.*
8. *Ordinale Compoti de Walveſcie ſecundùm Oliverum.*
9. *Modus Chyrographandi in Curiâ Regis de omnibus Placitis*

(a) Orig. Jurid. Cap. 23.

Theſe

These two were in the hand of Sir *Orlando Bridgeman.*

10. *De Brevibus Ordinandis.*
11. *Breves Pledes.*

In the Possession of *W. Goddard* of *Lincoln's* Inn, Esq.

12. *Modus Calumniandi Essonium.*
13. *Cadit Casa.*
14. *Cum sit Necessarium.*
15. *Natura Brevium.*
16. *De Brevibus Cassandis.*
17. *Exceptiones generales.*
18. *De Bastardiâ.*
19. *Tractatus Coronæ.*
20. *Placita Coronæ.*
21. *Notabilia.*
22. *Articuli in Narrando.*
23. *Proprietas Narrationum.*
24. *Judicium Essoinorum, per* Joh. de Metingham, *Cap. Justit.* 18. Ed. 1.

In the Custody of Sir *Mat. Hales.*

25. Rageman, *de Justiciariis assignatis.*
26. *Ordinationes Novissimæ apud Westmonasterium.*

Some

Some few others are suppos'd to be of the same Age, tho they are not regiſter'd in the forementiond Roll: As,

1. *Statutum Regis in Judaiſmo*. Which was likewiſe in Sir *M. Hale's* Library.

Amongſt Sir *Orl. Bridgeman's* Manuſcripts.

2. *De veteribus Placitis Coronæ.*
3. *Nova Capitula Coronæ.*
4. *Dampna in Duplo.*
5. *Ordo Exceptionum.*
6. *Placita de Itinere Cornubiæ*, 30. Ed.

1. In *Mr. Selden's* Library

Miroir.

'Tis no great Matter whether *Andrew Horn* (the Author of the *Miroir des Juſtices*) liv'd in the Reign of *Edward* the (*a*) Firſt or his (*b*) Son: But we ſhall follow a great Man's Example, againſt the Many, in placing him under the latter. This Writer can beſt inform us

(*a*) Vid. Not. ad. *Ælfred.* M. Vit. pag. 82. (*b*) *J. Seld.* Diſſert. ad *Fletam.* Cap. 1. §. 2.

what

what he meant by the Title of his Book. His Design, he says, (*a*) was to give the Judges of his Time a View of their comely and hard-favour'd Features, the Presenting them with what they should have been, as well as what they were. He very frequently quotes the Rolls of the *Saxon* Times, and even their very Year-Books, which are now vanish'd: And this shews that we have lost many of our best Helps towards the furnishing out of the History of those Ages, and demonstrates withal that the state of the Law in this Kingdom was then much different from what some would make it. He pretends to have perus'd all the Laws of this Island ever since the Reign of the Famous King *Arthur*; and some are so generous as to believe that, amongst the many antient Peices out of which he gather'd his Materials, he had seen K. *Elfred*'s Book *Contra Judices Iniquos*. I rather think that the Story and Catalogue which he gives us (*b*) of the forty four Judges, that were hang'd up by this King for their Illegal and Corrupt Practices, was the occasi-

(*a*) In Præfat. (*b*) Cap. 5. §. 1.

on

on of his being the reputed Author of ſuch a Book; and I am pretty ſure that this is a better Foundation than either *Bale* or *Pits* many times have for ſeveral of their Volumes. The *Engliſh* (*a*) Edition differs very much from the *French*, and yet the Tranſlator pretends that he *kept himſelf cloſe to the words and meaning of his Author.*

That excellent *French* Manual of our Laws which bears the Name of *Britton*, is uſually aſcrib'd to *John le Breton* Biſhop of *Hereford*; this opinion being grounded on the Account which one of our chief Hiſtorians gives of the death of that Prelate, *Obiit*, ſays he, (*b*) *hoc anno* Johannes Bretoun *Epiſcopus* Herefordenſis, *qui admodum peritus in Juribus Anglicanis, librum de eis conſcripſit qui vocatur* le Bretoun. It is certain that Biſhop dyed in the year there mention'd, there being ſtill to be ſeen (amongſt the Records of the Tower) the *Conge d' Eſlier* for the Election of a new one in his Place: But then 'tis

Britton.

(*a*) 12°. Lond. 1646. (*b*) *Mat. Weſtm.* ad An. 1275. Vid. etiam *E. Wingate*, in Præfat. ad *Britton.* & *Prynne* Rec. of *Ed.* 1. p. 168. 169.

hard

hard to imagine how one that dy'd in the third year of *Edward* the First's Reign ſhould refer his Readers (as (*a*) he does) to a Statute enacted in the thirteenth of that King. This has prevail'd with ſome to look after another Author; and finding there was one, of both theſe Names, who was a Judge (together with *Henry de Bracton*) in the (*b*) fifty firſt year of *Henry* the Third, they have gueſs'd that he was the Man. But, why ſhould not this Perſon be the ſame with the Biſhop? We know 'twas uſual enough to have Clergymen Juſtices of both Benches, and Sir *Ed. Coke* ſays expreſsly, that the Author of this Book was an (*c*) *Eccleſiaſtic*. *Mr. Selden* was of the ſame opinion when he publiſh'd *Hengham*: But he was perſwaded to change it afterwards, obſerving this Note in the Concluſion of a *MS.* Copy of that Treatiſe in his own Study; *Icy finiſt le* Bracton *que contient IV. livres, en les queux cheſcun maniere de Plee eſt contenue.* He alſo found that in our Year-Books, it was cited by the Name of *Bracton*; and that the Paſſage

(*a*) *Brit.* Capp. 14. & 36. (*b*) Vid. *J. Seld.* Not. in *Hengh.* pag. 7. (*c*) Inſtit. Par. 2. pag. 265.

quoted

quoted from *Matt.* of *Weſtminſter* was an Interpolation, no ſuch thing appearing either in the beſt *MSS.* or in the firſt Edition of that Hiſtorian. Theſe Conſiderations prevail'd with him to believe (*a*) that *Bracton* and *Breton* were intended for the ſame Perſon; the latter being given to a Treatiſe, which indeed is no more than an Abſtract of another better known by the former. He allows the Penman to be an Anonymous Epitomizer, ſometime in the Reign of *Edward* the Firſt; out of whoſe Laws ſeveral things are added, which are not (nor could be) *Bracton's*. If I may be allow'd to differ from all theſe Authorities, I ſhould think that the true Writer of this Abſtract was that ſame *Joh. Breton*, whom we find one (*b*) of the King's Juſtices (together with *Ralph* and *Roger de Hengham*) in the firſt year of *Edward* the Second; and this falls low enough to remove all the difficulties wherewith the other Opinions are clogg'd. *E. Wingate's* (*c*) Edition is juſtly com-

(*a*) Diſſert. in *Flet.* Cap. 1. §. 2. & cap. 2. §. 3. (*b*) Vid. D. *D. Dugd.* Summon. pag. 60. 62. 64. (*c*) 12°. Lond. 1640.

mend-

mended for the Care and Judgment of the Publiſher; ſuch Various Readings being added in the *Appendix* as ſerve very much to ſupply the Defects and Imperfections of the former Impreſſion. The Language is the true old *French* of the Thirteenth Century, as appears from the Authentic Inſtruments of thoſe days; and differs conſiderably from that of *Littleton* in the Fifteenth, which is ſtill in Faſhion amongſt our Modern Pleaders and late Reporters. The whole Book runs in the Name and Style of the King himſelf; as a Summary of all the Laws then in Force, within the Kingdom of *England* and Dominion of *Ireland*. There are ſome *MS.* Ordinances of Barons of the Exchequer, for the Eſtabliſhment of the Eſtate of *Edward* the Second's Houſhold, &c. in (*a*) Sir *John Cotton*'s Library; which, with what has been already accounted for, is all that's now fit to be mention'd in that Reign.

Nova Narr. It's generally agreed that the art of Pleading was brought to its Perfection

(*a*) *Claudius*, A. 8.

in

in *Edward* the Third's Reign; when the little Manual of Entries which bears the Name of *Novæ* (*a*) *Narrationes* was firſt Collected and Publiſh'd. It gives us ſuch Forms of Counts, Declarations, Defences, Pleas, &c. as were then in uſe; to which are added the *Articuli ad Novas Narrationes*, being a Commentary and ſome ſhort Rules upon them. But all theſe are few and defective, in Compariſon of what we have in thoſe *Books of Entries* which are the Works of later Times; the chief whereof are thoſe by (*b*) *Will. Raſtal*, (*c*) Sir *Edward Coke* and (*d*) Sir *Humphrey Winch*. Out of theſe three, a great many late Pedlars in Precedents have Collected and Publiſh'd what to their ſeveral little Wiſdoms appear'd to be of moſt common and Ordinary Uſe; and 'twere endleſs to repeat ſo much as the Title-Pages of ſuch Inſignificant Retailers. The Old *Narrationes* are ſaid to have been (*e*) vouch'd and allow'd by Sir *John Priſot*, who was Chief Juſtice of the Common-Pleas under *Henry* the Sixth.

(*a*) 8°. Lat. pret. 2 *s.* è MS. in Bibl. Huſp. *Lincoln.* (*b*) Fol. Lat. Pret. 3l. (*c*) Fol. Lat. Pret. 3l. 5*s.* (*d*) Fol. Lat. Pret. 40 *s.* (*e*) *Coke's* Rep vol. 10. in Proæm.

Spec. Regis We are told of a Book call'd (a) Speculum Regis; which was written in Latine by *Simon Islip* Archbishop of Canterbury, and directed (I suppose, in an Epistolary Way) to King *Edward* the Third. The Author sharply inveighs against the Intolerable Abuses of Purveyours and Purveyance, in many particulars; and earnestly presses the King to provide Remedies for those unsufferable Oppressions. Accordingly, His Majesty was pleas'd frequently to peruse the Book and to consider its Contents; which had so good effect upon him that (in the Thirty-Sixth year of his Reign) he caus'd many excellent Laws, *of his own Will*, to be made for that purpose. The other Law-Books of his Time (which are here to be mention'd) are these only: 1. *Natura Brevium vetus*; which has been several times (b) Printed, and gave occasion to *Fitzherbert* to call his *La Nowelle Natura*, &c. 2. A MS. Book of old Tenures. 3. *Placita* (c) *in Itinere in Comitat.* Bedford, Nottingham & Derby. 3. *Ed.* 3. 4. *Placita*

(a) Institit. Par 2. pag. 545. (b) 8°. Lond. 1572. (c) in Bibl. Hosp. *Lincoln.* (d) MS. in. Bibl.. Sa (e) MS. Ibid.

in Itinere in dictis Comitat. 4 *Ed.* 3.

Sir *John Forteſcue* was (*a*) Chief Ju- *Forteſcue.*
ſtice of the King's Bench, during half of *Henry* the Sixth's Reign, tho', ſince he thought fit to acquaint us that his unfortunate Maſter had made him Chancellour, he is never ſo much as remember'd in the other high Office. He attended the King into *Scotland*, when he fled thither for ſhelter; and there it was (as is ſuppos'd) that he had the great Seal committed to his Charge. However, he was certainly (*b*) Chancellour when he wrote his Book *De laudibus Legum Angliæ*, in the Dutchy of *Berry*: Where Queen *Margaret*, with her Son Prince *Edward*, liv'd then in Exile, during the King's Impriſonment in *England*. The Prince, he ſays, improved himſelf wonderfully, in Riding the great Horſe and other Exerciſes of Chivalry, ſuitable to his high Birth and Proſpect of a Crown: Which a certain old Knight (*grandævus quidam ſenex*, in his own Modeſt Language) his Father's Chancellour, obſerving, concluded with

(*a*) *Spelm.* Gloſs. Edit. Noviſs. p. 343. & *J. Sel.* in Præfat. ad *Forteſc.* (*b*) See his Introduct.

himſelf that ſuch a Martial Hero would want no other Qualification for a Throne, ſave only an Acquaintance with the Laws that were to be his Guide and the Rule of his Government. This might be the occaſion of his putting the Work into that Form wherein 'tis publiſh'd; but 'tis reaſonably (a) believ'd that it had a more early Original. *William de la Pole* Duke of *Suffolk* (*Henry* the Sixth's great Favourite and Flatterer) endeavour'd to bring in the uſe of the Civil Law; which oblig'd the Chief Juſtice to write in Commendation of our own Laws, preferring them (for the Government of this Land) before the other. In this Treatiſe (which is manag'd by way of Dialogue betwixt the Prince and Himſelf) he proves that all Kings are under the like obligation to be Converſant in the Laws of their own Realms, as thoſe of *Iſrael* were to be in the Book of *Deuteronomy*; that our Laws are not alterable at the ſole Will of our Monarchs, whoſe Power is not Abſolute and *Royal*, but Legal or *Politick*, that our Cuſtomary or Common-

(a) Inſtit. Par. 2. cap. 99. p. 208. ubi etiam citatur Rott. Parll. 28. Hen. 6. num. 19. uſq. ad n. 47.

Law

Law is the moſt reaſonable, as well as the moſt (*a*) antient, in *Europe*; that our Statutes, enacted by the Advice and Conſent of above three hundred Senators, are not alterable but by the ſame Authority that gives them their Being; that our Conviction of Criminals, by Juries, and without racking, is more Juſt and Human than the Methods of ſome Neighbouring Nations; Our Challenging of Pannels, Writs of Attaint upon Corrupt Verdicts, and the uſual Wealth of our Jurors, ſuch Securities to the Lives and Eſtates of Subjects as other Countries are incapable of affording; Our Kings greater and more potent in the Liberties and Properties of their People, than Arbitrary Tyrants in the Vaſſalage of their Slaves; the Civil Law more unreaſonable than ours in the Legitimation of Children born before Wedlock, as alſo in its Axiom of *Partus ſequitur ventrem*, Tuition of Orphans, &c. Our Inns of Court more convenient for the ſtudy of the *Engliſh* Law than our Univerſities, and their Serjeant's Degree as ho-

(*a*) See Sir *W. Temple*'s Introduct. to *Engl.* Hiſt. pag. 312. 313.

nourable as that of Doctor in theſe; and laſtly, that the Proceedings in our Courts of Judicature are leſs dilatory than in thoſe of other Nations. The Book was firſt tranſlated, and publiſh'd together with its *Engliſh* Verſion, by (*a*) *R. Mulcaſter*; being reviſ'd (*b*) afterwards, and improv'd with a few Curſory Notes, by *Mr. Selden.* His Edition being out of Print, the Company of Stationers gave leave to one of their Body to reprint it: But he (*c*) publiſh'd it in a very careleſs and ſlovenly manner. The Literal faults, eſpecially in the *Latine* Text, are very Numerous: and ſome of 'em ſuch as moſt wretchedly pervert the Author's Senſe and meaning. Being written in a conciſe Method, ſuch as was proper for a Piece deſign'd for the View and Uſe of a Prince, it was thought deſerving enough of ſuch a Gloſs or Commentary as uſually attends Books of Value and Authority; and this good Pains was taken with it by *Edw. Waterhouſe*, who calls his Work by the name of (*d*) *Forteſcutus Illuſtratus.* He wrote other

(*a*) 8°. Lond. 1599. (*b*) 8°. Ibid. 1616. (*c*) 12°. Lond. 1660. (*d*) Fol. pret. 12 *s.*

two

two Books of the Diſtinction betwixt *Dominium Regale & Politicum*, and a Retractation of his Errors about the Title of the Houſe of *York*; both which are ſtill Pretty (*a*) Common in Manuſcript, but have not yet been thought worthy of the Preſs. A third he compiled likewiſe, (as (*b*) himſelf tells us) for the uſe of Prince *Edward*, which treated *de Naturâ Legis Naturæ*; and, in the Opinion of its Author, was a Notably ſhrewd Piece: But whether 'tis now loſt, or was deſtroy'd and recanted upon the forementiond change of his Side and Principles, I cannot tell. I ſuppoſe he grew weary of Baniſhment and the Intereſts of the Houſe of *Lancaſter* ſometime before the unhappy return of the Queen and her Son, upon the Earl of *Warwick*'s Revolt; ſince we do not (*c*) hear of him in their Retinue. I am aſſur'd, by (*d*) one of general Acquaintance in the Antiquities of this Kingdom, that his laſt retirement was at *Ebburton* in *Gloceſterſhire*; where he lyes bury'd, and has lately had a good

(*a*) *J. Selden.* Præfat. ad *Forteſc.* It. Bibl. Cott. *Claudius*, A. 8. & *Otho.* B. 1. (*b*) Fol. 27. b. 35. a. 78. a. 88. b. (*c*) *Stow's* Chron. p. 424. (*d*) *R. Parſons*, LL. D. Dioceſ. Gloceſtr. Cancell.

handſome Monument erected to his Memory.

Statham. *Nicholas Statham* (one of the Barons of the Exchequer in the time of *Edward* the Fourth) was the firſt that employ'd himſelf in that uſeful Service to the Young Students of the Law, of *Abridging* the larger Arguments and tedious Reports of the *Year-Books* into a ſhort Syſteme under proper Heads and Common-Places; which he did as low as *Henry* the Sixth's Reign. His Book has had ſeveral (*a*) Impreſſions; and ſtill carries a good Repute and high Price. His Example was follow'd by Sir *Robert Brooke*, Chief Juſtice of the Common-Pleas under Queen *Mary*; who alſo made an Alphabetical Abſtract of all the Choice Matters in our Law, as contained in ſuch Commentaries, Records, Readings, &c. This is juſtly entitled *La Graunde Abridgement*: Being indeed a general Epitome of all that could be had upon the ſeveral Heads there treated on. It has had likewiſe a great many (*b*) Editions; amongſt

(*a*) Fol. Fr. temp. *Hen.* 8. &c. pret. 30 *s.* (*b*) Fol. min. Lond. 1573. 76. 86. &c.

which

which (as it commonly fares with the Authors of that Profeſſion) the eldeſt are ſtill reckon'd the beſt. The dayly multiplying of our Reports has occaſion'd a third Alphabetical Abridgement by (*a*) *Hen. Roll* (publiſh'd by the late learned Chief Juſtice *Hale*) and a fourth by (*b*) *W. Sheppard*; and we muſt expect that the Number of theſe will be yet farther encreas'd. They are indeed much more helpful to a man of Law than to an Hiſtorian; who will find that they generally omit what makes moſt for his Purpoſe.

Sir *Thomas Littleton* was one of the Juſtices of the Common-pleas, in the Reign of *Edward* the Fourth; who, in his Fifteenth Year, made him a Knight of the Bath. His Book of *Tenures* is in every ones hand and head that pretends to the Profeſſion or Study of the Municipal Laws of this Kingdom; and has been more (*c*) frequently imprinted than any other Law-Book whatever. A great many of theſe Editions are ve- *Littleton.*

(*a*) Fol. Ft. pret. 50 *s.* (*b*) 4°. 3. Voll. pret: 35 *s.* (*c*) 4°. *Rotham.* & Fol. *Lond.* temp. *Hen.* 8. *Gallice* & *Lat.* Sæpius. *Gall.* & *Angl.* 8° *Lond.* 1670. &c.

ry

ry faulty, and cautiously to be used; turning the foolish Marginal Notes (of some illiterate owners of the MS. Copies) into the Text, and senselessly quoting (*a*) Cases that were never thought on by the Author himself. The first Impression shews that it never had his finishing hand; since the Table there gives the Titles of Tenancy by *Elegit*, *Statute Merchant* and *Staple*, which he never lived to treat on in his Book; having only Projected them, amongst others, in the first Draught of his Work. A great many Particulars of his Common-Law are now alter'd by Acts of Parliament; and others are disused and grown obsolete. For Example, The whole Story about Gifts in *Frank-Marriage*, &c. (*b*) serves only for Moot-Cases; affording some pretty quaint and nice Questions in Law, for the Exercise of Youth in the Inns of Court. Some Passages which may here seem a little dark (by reason of the Brevity to which the Author's Method obliged him) may be had more largely explain'd in the Year-Book of *Edward*

(*a*) Lib. 3. cap. 1. §. 260. &c. (*b*) Instit. Par. 1. Lib. 3. cap. 2. §. 271.

the

the Fourth; wherein we have frequently *Littleton*'s Opinion, in ſeveral intricate Caſes, and the Reaſons that confirm'd it. Others are more amply treated on by *Bracton* and *Breton*; which, in the main, have been Epitomiz'd by this Writer. His two firſt Books were (as himſelf (*a*) confeſſes) written by way of Comment upon *le antient livre de Tenures*; which (as (*b*) *Fitzherbert* informs us) was the Work of a grave and diſcreet man in the Reign of *Edward* the Third. Notwithſtanding all theſe ſeeming Inſufficiencies, the Treatiſe has obtain'd that Credit, and the Author's Judgment has been reputed ſo infallible, that (*c*) Sir *Hen. Hobart* and others of King *James* the Firſt's Judges would not ſuffer his Opinion to be argu'd; and he who beſt underſtood him, gives a Character of his Performance as towering as 'tis poſſible to raiſe it. *Tis the moſt perfect and abſolute Work*, (*d*) ſaies he, *that ever was written in any humane Science; and they that endeavour to diſgrace the Author do not underſtand him.* The firſt Volume of Sir *Edward Coke*'s Inſti-

(*a*) Lib. 3. cap. 13. §. 749. (*b*) In Præfat. ad N. B. (*c*) Præfat. ad Inſtit. Par. 1. p. 5. (*d*) Id. Ibid.

tutes

tutes is onely a Tranſlation and Comment upon this little Book; wherein all the Corruptions and Additions, that were in the former Prints, are ſaid to be removed. I do not doubt but Effectual Care was taken in that Matter; and yet there have Several Miſtakes (eſpecially in Proper Names) eſcaped the Commentator himſelf, in his own Part, which will be more troubleſome to the Hiſtorian than the Lawyer. Sir *Edward*'s Complete (*a*) Copy-holder may be alſo read as a ſecond Commentary on *Littleton*'s Tenures; ſince therein is explain'd the Nature of Manors, and the Tenements that are held by Copy of Court-Roll, &c. Together with theſe it will be highly convenient to peruſe Sir *Hen. Spelman*'s moſt learned and Methodical Treatiſe of the Original, Growth, Propagation and Condition, of Feuds and Tenures by Knight-Service here in *England*; which is lately (*b*) given us in Print, and wherein that Whole Subject is very Critically and Minutely handled. He proves, beyond all Contradiction, that theſe

(*a*) 8°. pret. 2 *s.* 6 *d.* (*b*) Inter Reliq. *Spelman.*

here-

hereditary Tenures were brought in by the *Normans*; and that all the Words or Terms of Art that belong to them were unknown to the *Saxons*: As were alſo thoſe beneficiary Fruits (of Wards, Marriage, Homage, &c.) that grew from them.

Ed. Dudley was an eminent Lawyer in the beginning of the Reign of *Henry* the Seventh; who made him a Privy-Councellor, and employ'd him (with Sir *R. Empſon*) in the invidious Office of Collecting Forfeitures upon Penal Statutes, which (to gratify the enrag'd Populace, in the entrance of the next Reign) coſt him his Head. He wrote, in a (*a*) *Juridic Stile*, a Book entitled *Arbor Reipublicæ*; but what the Reader will find in it, worth his ſeeking, I cannot inform him *Dudley.*

The Dialogue (in two Parts) which goes now by the Name of the *Doctor and Student*, was written by one *Chr. Seintgerman*, a Barriſter of the Inner-Temple; who dy'd in the year (*b*) 1540. *Seintgerman.*

(*a*) MS. in Bibl. Cott. Vid. & Ath. Oxon. lib. 1. p. 7.
(*b*) Ibid. pag. 48.

Bale

Bale says 'twas in 1539 and Dr. *Fuller*, (*a*) misplacing the two last Figures, makes it 1593 assuring us that he was extremely aged (above Eighty) when death siez'd him. His Book was first publish'd in *Latine*, and has had several (*b*) Editions in that Language under the Title of *Dialogus de fundamentis Legum* Angliæ *& de Conscientia*. In the Translation 'tis call'd, (*c*) *The Dialogues in English between a Doctor of Divinity and a Student in the Law of England*; and this has some few Chapters more than the former. The Design of the Book is to enquire into the Grounds and Reasons of the Common-Law of *England*; and to shew how consistent every of its Precepts (how surprizing soever they may appear, at the first sight) are with right Reason and a good Conscience. A great many of the most curious and intricate Points of Law are Stated with that clearness which is extremely Pleasant and entertaining, as well as useful and Instructive; and all the seeming Hardships and Difficulties in the Cases

(*a*) Worthies, p. 210. in *London*. (*b*) 8°. Lond. 1518. 1598. 1604. &c. (*c*) 8°. Lond. 1580. &c.

of

of Inheritance, Contract, Warranty, Wreck, Actions feign'd, &c. are made eaſy, and fairly reconcilable to *Moſes and the Prophets*. *Mr. Wood* ſays, that, with ſeveral of the *Latine* Copies, he found another Treatiſe bearing the Title (*a*) *Principia ſive Maxima Legum Angliæ, à Gallico illo (ut fertur) ſermone collecta, & ſic in Latinum tranſlata, non ſolùm generoſis Studentibus, verùm etiam Terrarum dominis & poſſeſſoribus ſummè Neceſſaria* : But he knows not whether 'twas of the ſame Author's Compoſure. Since his time, even down as low as our own, this very Subject has been undertaken by a great many Writers. Some of theſe, having raſhly attempted the treating of Matters above their Underſtandings, are not worth mentioning: But others are highly deſerving of any true *Engliſhman*'s reading and Conſideration. Such are. *J. Perkin's French* Treatiſe, which is ſaid to have been written (*b*) not long after this Author's deceaſe; Sir *Fran.* (*c*) *Bacons* Elements of the Common-Law of *England*;

(*a*) 8°. Lond. 1546. (*b*) Vid. Orig Jurid. Cap. 23. (*c*) 4°. pret. 3 *s.* 6 *d.*

Dr.

Dr. *Cowels* (*a*) Inſtitutions, after the Method and Order of thoſe of the Empire; *M.* (*b*) *Hawkes*'s and (*c*) *Noy*'s Grounds of the Law; *W.* (*d*) *Philip*'s Principles; and (*e*) *E. Wingate*'s Maxims of Reaſon.

Fitzherbert. Sir *Anthony Fitzherbert* was one of Juſtices of the Common-Pleas in *Henry* the Eighth's time, and was Author of the new (*f*) *Natura Brevium*, amongſt ſome other things elſewhere mention'd. He is obſerved (in this Book) never to cite any Authority, but where the caſe is rare and doubtful; following herein the great Example of Sir *Tho. Littleton* in his famous Treatiſe of Tenures. It was carefully review'd and corrected by *Will. Raſtal*; who added a Table and ſome other proper Ornaments, to what its excellent Author ſeems to have left unfiniſh'd. This *Raſtal* was one of the moſt learned Juſtices of the ſame Bench in Queen *Mary*'s time; but left the Kingdom upon her Siſter's Acceſſion to the Throne,

(*a*) 8°. Lat. pret. 2 *s.* Angl. pret. 2 *s.* 6 *d.* (*b*) 8°. pret. 4 *s.* (*c*) 8°. pret. 1 *s.* (*d*) 12°. pret. 1 *s.* (*e*) Fol. pret. 14 *s.* (*f*) 8°. Fr. 1567. &c.

be-

being as Zealous a Romaniſt as his Uncle Sir *Thomas More*, and dy'd at *Lovaine*. He has written (beſides the *Entries* before mention'd) (*a*) *Les Termes de la Ley*, being an uſeful Explanation of the Terms of Art in our *Engliſh* Law-Books; a work well known and eſteem'd by the Profeſſors and Students in that Faculty. Dr. *Cowel's* (*b*) *Interpreter* was intended as an Enlargement upon this Book; but met with a different ſort of Uſage, the (*c*) Parliament having order'd it to be burn'd and its Author impriſon'd. One of the Crimes laid to his charge was his vilifying the Laws of *England*, and endeavouring to expoſe *Littleton's* Tenures: whereas, in Truth, all that could juſtly be charg'd on him (as to this Particular) was onely a (*d*) modeſt recital of *Fr. Hottoman's* Raillery and Objections. Others alledge (*e*) a quite different Reaſon for this ſevere Treatment of him and his Book; aſſuring us that he had therein ventur'd to aſſert that King *James* the Firſt (who uſed not to put

(*a*) 8°. Lond. 1595. &c. (*b*) 4°. Cantab. 1607. (*c*) A°. 3. Jac. 1. (*d*) Vid. *Spelm.* Gloſs. voce *Tenura*. (*e*) *Weldon's* Court and Char. of King *James* 1. p. 191.

up a Reflection upon himself) had never taken *that Oath which he ought to have done at his Coronation*: And some (*a*) say that his maintaining that the Royal Prerogative was limited, was what chiefly occasion'd his sufferings.

Year-Books. There were ten (*b*) Volumes of the *Year-Books* Printed, by Subscription, about twenty years ago; being recommended by the Judges to *all Students and Professors of the Law, as an Essential Part of their Study.* These began with the Reign of *Edward* the Third, and ended with that of *Henry* the Eighth; and had all of 'em, at several times, been publish'd heretofore: To which were afterwards added the (*c*) Cases adjudg'd in the time of *Edward* the Second, collected by Serjeant *Maynard* out of several antient Manuscripts. The fairest of these is in the Library of the Inner-Temple, given to that Society by Sir *John Barker*, Chancellour of the Exchequer under *Philip* and *Mary*. It was written by *Richard de Winchedon*, a Student of the Law in those

(*a*) Ath. Oxon. vol. 1. p. 784. (*b*) Fol. Lond. 1679. (*c*) Fol. Fr. pret. 25 *s.*

times

times; who is ſuppos'd to be the firſt Collector of theſe Juridical Annals. *Mr. Selden* (*a*) had ſeen the like Reports of the Reign of *Edward* the Firſt: For, ſpeaking of the Authority of the Civil Law in our Courts, and the Quotations that were ſometimes made out of it at the Bar, *Sed rariſſimæ* (ſays he) *ſunt ejuſmodi in Seculo illo Juris apud Noſtros Citationes; quod ſcimus ex Annalibus Juridicis* Edwardorum *tum primi tum ſecundi. Neque in primi Annalibus quid ejuſmodi mihi occurrit.* The firſt-publiſh'd ten Volumes are, 1. The former Part of *Edward* the Third; being Reports of Caſes in his firſt ten years. 2. The Second Part of *Edward* the Third; beginning with the Tenth, and ending with the Thirty-ninth year of his Reign. 3. The *Quadrageſims*; beginning at the Fortieth, and ending the Fiftieth year of that King. 4. The Book of *Aſſizes* and Pleas of the Crown, moved and depending before the Juſtices, as well in their Circuits as elſewhere, in the time of *Edward* the Third: Which ſaid Book is of great

(*a*) Diſſert ad *Flet.* cap. 8. §. 3.

Authority in (a) Law; and is so call'd because it Principally contains Proceedings upon Writs of Assize of *Novel Disseisin*, which in those days was *festinum et frequens remedium*. 'Tis often quoted and referr'd to by most of our antient Writers; and even *Littleton* (b) himself gives some examples out of it. 5. The Reigns of *Henry* the Fourth and *Henry* the Fifth. 6. The Annals of *Edward* the Fourth. 7. The *Long Quinto*; or, Cases adjudg'd in the fifth year of *Edward* the Fourth. 8. The first Part of *Henry* the Sixth; being the Cases of the first twenty years of that Reign. 9. The Second Part of *Henry* the Sixth; or, Reports in his twenty-first and following years. 10. Cases adjudg'd in the Reigns of *Edward* the Fifth, *Richard* the Third, *Henry* the Seventh and *Henry* the Eighth. These undoubtedly give us the best History of our Judges of both Benches; setting forth their Opinions in Cases of Intricacy, and (by Consequence) good probable Grounds for guessing at the Learning and Accomplishments of

(a) Instit. Par. 1. lib. 3. cap. 4. §. 318. (b) Lib. 3. cap. 5. Sect. 383. & cap. 7. §. 420.

the

the Men. In this we have the concurring Teſtimony and Experience of Sir *William Dugdale*; who, amongſt the Numerous Monuments of his Induſtry, has left ſome *MS.* Collections of his own which bear the Title of (*a*) *Obſervations upon Sundry Perſons learned in the Law, extracted from the Tear-Books.* He has indeed (*b*) elſewhere noted two faults, in the elder Editions of them, which may expoſe young Students to miſtakes; and, I am ſure, they will be a much greater Stumbling-Block in the way of an Hiſtorian. 1. The Authorities alledg'd are dark; not diſtinguiſhing the Judges and Pleaders. Sir *William*'s own Catalogues of the Judges may help to rectify this. 2. The Names of both are in ſuch Abbreviations as to leave the Reader to very uncertain Conjectures, how the Perſons mention'd were truely call'd. For the more effectual and ready Uſe of 'em there are ſeveral Tables and other Manuals publiſh'd; the chief whereof are *Tho. Aſh*'s (*c*) *Repertorium Generale*, and his (*d*) *Epiceia.*

(*a*) MSS. *Dugd.* in Muſæo *Aſhmol.* E. 2. (*b*) Orig. Jurid. in Præfat. (*c*) Fol. Fr. 2. Voll. pret. 15 *s.* (*d*) 8°. pret. 2 *s.*

Reports. Antiently Judgments at the Common-Law were recorded with the (*a*) Reaſons and Cauſes of ſuch Judgments; and ſo the cuſtom was during the whole Reign of *Edward* the Firſt, and a great ſhare of that of *Edward* the Second. But this Faſhion ceas'd in *Edward* the Third's Time; when Cauſes were Numerous, and the Practice of the Law was brought to its full Stature and Perfection. Hence aroſe the Trouble of thoſe grave Reporters of Caſes, who (from the beginning of that Reign) have ſupply'd the Defects we meet with in the Records; and do not onely afford us (as theſe do) the final Determination of the Judges in each Caſe, but alſo the intermediate Reaſonings and Debates whereon ſuch Judgment was form'd and Founded. The Numbers of our Reporters are already Swoln to ſome Scores, and are dayly encreaſing; but I ſhall onely trouble the Reader with an Alphabetical Index of ſuch as give the Hiſtory of the Caſes within my own preſent Limits, not medling with thoſe that

(*a*) Vid. Inſtit. Par. 4. pag. 4.

have

have been adjudg'd ſince the Union of the Kingdoms.

Anderſon (*a*) (Sir *Edmund*, ſometime Chief Juſtice of the Common-Pleas) of the Principal Caſes argu'd in his own Court, during the Reign of Queen *Elizabeth*.

Bendloes (*b*) (*William*, Serjeant at Law) gives the Reign of *Henry* the Eighth, *Edward* the Sixth, *Philip* and *Mary*, and Queen *Elizabeth*.

Brooke (Sir *Robert*, before mention'd) collected the caſes, moſt remarkable in the Common-Pleas, from the Sixth of *Henry* the Eighth to the Fourth of Q. *Mary*. The Book has been frequently (*c*) Printed; and bears the Title of *Aſcuns novel caſes*, &c.

Coke (Sir *Edward*) in his firſt (*d*) Eleven Books brings Prime Caſes adjudg'd in the Reigns of Queen *Elizabeth* and King *James* the Firſt, intermix'd. The

(*a*) Fol. *Fr.* in two Parts. pret. 24 *s.* (*b*) Fol. *Fr.* pret. 12 *s.* (*c*) 8°. Lond. 1578. 1604. 1625. &c. (*d*) Fol. *Fr.* pret. 31 *Engl.* pret. 30 *s.*

Author, being accus'd (by the ſaid King's Directions) before his Majeſty and the Privy-Council, of ſome misbehaviours in the Management of his Office as Chief Juſtice, it was Order'd: (a) 1. *That he be ſequeſter'd from the Council-Table until his Majeſty's Pleaſure be further known.* 2. *That he forbear to ride his Summer's Circuit as Juſtice of Aſſize.* 3. *That during this Vacation* (while he has time to live *Privately, and diſpoſe himſelf at home*) *be take into his Conſideration and Review his Books of Reports: Wherein, as his Majeſty is inform'd, there be many Exorbitant and Extravagant Opinions, ſet down and Publiſh'd for Poſitive and good Law: And, if in Reading and Review he find any thing fit to be alter'd or amended, the Correction of it is left to his Direction: And, amongſt other things, his Majeſty was not well pleas'd with thoſe Books wherein he ſtyled himſelf Lord Chief Juſtice of* England, *whereas he could challenge no more than Chief Juſtice of the King's Bench: And, having corrected what in his Diſcretion he found meet in thoſe Reports, his Majeſty's Pleaſure was, that he ſhould bring the ſame privately to himſelf, that he*

(a) Act. Concil. Reg. MS. *Grenvic.* Jun. 30. 1616.

might

might conſider thereof as in his Princely Judgment ſhould be found Convenient. This was an Authoritative and terrible Sentence upon the whole. The Fifth Part of them contains caſes relating to Eccleſiaſtical Power and Juriſdiction; and the falſe grounds, whereon many of the Judgments are there given, have been ſhew'n by *Parſons* in his (*a*) Anſwer to that Part.

Croke (Sir *George*, one of the Juſtices in the Kings Bench, *temp. Car.* 1.) in the firſt of his Three (*b*) Parts, brings caſes from the twenty-fourth of Queen *Elizabeth* to the end of her Reign.

Dyer (Sir *James*, Chief Juſtice of the Common-Pleas) collects choice (*c*) caſes throughout the four Reigns of *Henry* the Eighth, *Edward* the Sixth, *Mary* and *Elizabeth*. i. from the 4th of *Hen.* 8. to 24. *Eliz.*

Goldesborough (*d*) (*J*, Eſquire, Prothonotary of the Common-Pleas) touches onely upon the laſt years of Queen *Elizabeth*'s Reign.

(*a*) 4°. Pret. 8 *s.* (*b*) Fol. pret. 50 *s* (*c*) Fol. Fr. Pret. 24 *s.* (*d*) 4°. pret. 3 *s.* 6 *d.*

Hughes

Hughes (*a*) (*W.* Esquire, of *Grey's* Inn) publish'd an Anonymous Collection of Reports, seen and approv'd by Mr. Justice *Godbolt*, the first whereon go as high as Q. *Elizabet.*

Kelway (*b*) (*Supervisor Liberationum Regis*, 10. Hen. 8.) wrote Reports from the twelfth of *Henry* the Seventh to the twenty-first of *Henry* the Eighth; and seems to have been the First Writer of *Reports*, giving that Name to his own Collection of Cases which are brought within the Year-Books.

Noy (*c*) (*William*, Attourney General to King *Charles* the First) begins with Queen *Elizabeth's*) tho' the chief of his are in the two following Reigns.

Owen (*d*) (*Thomas*, one of the Justices of the Common-Pleas in Q. *Elizabeth's* Reign) reconciles many seemingly disagreeing Sentences in the Year-Books.

Plowden (*e*) (*Edm.* Serjeant at Law)

(*a*) 4°. pret. 12 *s.* (*b*) Fol. Fr. pret. 14 *s.* (*c*) Fol. pret. 10 *s.* (*d*) Fol. pret. 9 *s.* (*e*) Fol. Fr. in two Parts. pret. 20 *s.*

goes

goes thro' the Reigns of *Edward* the Sixth, *Philip* and *Mary*, and Queen *Elizabeth*. He might have done much greater things, had he ſtarted early enough; but he (*a*) practis'd Phyſick ſome years before he engag'd in the Law. His Reports were abridg'd in *French*, and the Abridgement was afterwards tranſlated into *Engliſh* by *Fabian Hickes*: As before they had been render'd ſomewhat more uſeful by a Table made for them by *W. Fleetwood*, Recorder of *London*. There's this Character given of him by an able Judge (*b*) *Ut in Juris* Anglicani *Scientiâ, de quâ ſcriptis benè meruit, facilè Princeps; ita vitæ integritate inter homines ſuæ Profeſſionis nulli ſecundus.*

Popham (*c*) (Sir *John*) his own Caſes are onely thoſe of Queen *Elizabeth*'s Reign; tho' others are added by the Publiſhers of his Book. *Cambden* (*d*) ſays he was Chief Juſtice of the King's Bench: But his laſt (*e*) Will proves that (*f*) Sir *William Dugdale* has more rightly

(*a*) Ath. Oxon. Vol. 1. p. 176. (*b*) *Camb.* Annal R. *Eliz.* ad An. 1584. (*c*) Fol. pret. 8 *s.* (*d*) Annal. Reg. *Eliz.* ad An. 1592. (*e*) Vid. Ath. Oxon. vol. 1. p. 293. (*f*) In Chron. Serie ad fin. Orig. Jur.

placed

placed him in the Common-Pleas. His Book it ſelf adjudges the Cauſe the ſame way.

Savil (*a*) (Sir *John*, Baron of the Exchequer) has the Caſes of his own Court, and thoſe of the Common-Pleas, in the Reign of Q. *Elizabeth*.

Yelverton (*b*) (Sir *Henry*, Juſtice of the Common-Pleas) gives alſo ſome few of the latter part of that Queen's Reign.

Readings. Together with the peruſal of the Law-Writers (properly ſo call'd) it may be convenient for our Hiſtorian to conſult alſo ſome of the ſhort *Readings*: Which are Vacation-Exerciſes perform'd by the Utter-Barriſters in our Inns of Court, by the appointment of the Benchers. The *Reader* uſually makes choice of ſome Act of Parliament for his Subject; and his chief buſineſs is to obſerve what Inconveniences and Defects were in

(*a*) Fol. Fr. pret. 6 s. (*b*) Fol. Fr. pret. 8 s.

the

the Law, before the making of that Act, and how far it removes them. Of this kind several have been publish'd by Sir *Robert Brook*, Sir *Francis Bacon*, and others.

CHAP.

CHAP. VI.

Of our Eccleſiaſtical Courts and their Regiſters.

THE General Name which was anciently given, even by our (*a*) Law-givers themſelves, to the Eccleſiaſtical Courts, was *Curia Chriſtianitatis*; which ſeems to be but a little lamely explain'd by the great (*b*) Expounder of our *Engliſh* Law: For as the Conſtitutions that regulated their Proceedings were Sacred and Divine, ſo the matters therein debated were Spiritual; and 'twas believ'd that, without ſuch Judicatories, the very Subſtance of Religion would Periſh and come to nothing. On this Conſideration, it has been the Pious Care of our Rulers to guard and defend them againſt the Encroachments of their Temporal Courts, whereof we have two Emi-

(*a*) Vid. Statut. *Circumſpecte Agatis*, 13. Ed. 1. (*b*) D. *Ed. Coke*, Inſtit. Par. 2. pag. 488.

nent

nent Inſtances in the Statutes of (*a*) *Articuli Cleri* and *Circumſpectè Agatis*. Sir *Edward Coke*, in his (*b*) Commentary upon the former of theſe, has given us the Anſwers of King *James* the Firſt's Judges to five and twenty Objections, which were laid before that King and his Council, by Archbiſhop *Bancroft*, againſt the frequency of Prohibitions. This was in the Third year of that Reign; and, not long after, Sir *Thomas Ridley* wrote his *View of the Civil and Eccleſiaſtical Law*. This excellent Author, having defined both theſe Laws, and given a ſhort account of the Volumes wherein they are contain'd, proceeds to ſhew what Authority they have (of right) in this Kingdom; how the Authority has been, of late years, encroach'd upon; and by what means it may be reſtor'd, and even improv'd, without any Injuſtice to the Profeſſors of our Common-Law. After this Book had wander'd a while under great Variety of Fortunes, and different Cenſures, it had a (*c*) Second Edition given it by the learned *T. Gregory*, then Chaplain of Chriſts-Church

(*a*) A°. 9. Ed. 2. (*b*) *Inſtit.* Par. 2. p. 599. (*c*) 4°. Oxon. 1634.

In

in *Oxford*: Who, in the Notes he publiſh'd upon ſome Paſſages, gave here a very early Teſtimony of his great Knowledge in the Antiquities and Hiſtory of the Chriſtian Church in General, as well as in thoſe of *England*, from the firſt Eſtabliſhment of the Goſpel in this Iſland. *R. Mocket* (Chaplain to Archbiſhop *Abbot*, and Warden of *All-Souls*) was Sir *Thomas*'s Cotemporary; and wrote alſo a general View of the State of Eccleſiaſtical Juriſdiction in the *Engliſh* Church, which he entitled *Tractatus de Politiâ Eccleſiæ Anglicanæ*. 'Twas (*a*) firſt publiſh'd with his *Latine* Tranſlation of our Liturgy, Articles, &c. and immediately condemn'd to the Flames, and burn'd. What was the Occaſion of ſuch a rough Treatment is variouſly reported. Some (*b*) ſay that the fault was in this Treatiſe; the Author having therein ſhewn himſelf *a better Chaplain than Subject*, magnifying the Eccleſiaſtical Power and depreſſing the Temporal. Others, (*c*) better acquainted with the Tranſ-

(*a*) Fol. Lond. 1616. (*b*) See *Fuller*'s Ch. Hiſt. ad an. 1616. (*c*) *P. Heylin*, Cypri. Angl. lib. 1. p. 70.

actions

ctions of thoſe Times, affirm the Cauſe to have been of another Nature: And that the whole Volume periſh'd upon account of the Author's leaning too much towards the Diſcipline of *Geneva*, and (on that Score) omitting the firſt Clauſe of the twenty'th Article. However it was, the Treatiſe *de Politia* has ſince had the favour of a new (*a*) Edition; and is well eſteem'd as a learned and uſeful Syſteme. With it there's now joyn'd (and very fitly) *R. Zouch's Deſcriptio Juris & Judicii Eccleſiaſtici ſecundùm Canones & Conſtitutiones Anglicanas*: Wherein the Modern Practice of both our Superiour and ſubordinate Courts is moſt ſuccinctly and methodically Illuſtrated; not only by the antient Canoniſts, but likewiſe by the Common and Statute-Laws of this Kingdom. Attorney General *Noy* left a large (*b*) Volume of Collections out of the Records of the Tower, touching the Privileges and Juriſdiction of our Eccleſiaſtical Courts; which we have reaſon to believe would be anſwerable to that Character, which

(*a*) 8°. Lond. 1683. (*b*) Ath. Oxon. vol. 1. pag. 506.

Archbiſhop (*a*) *Laud* has left of him, that he was *the greateſt Friend to the* Engliſh *Church that ſhe ever had of his Condition, ſince ſhe needed any ſuch.* Till theſe Collections can be retriev'd, we muſt be content to learn the Nature of our Church's Policy from ſuch Helps as have been already mention'd; together with *Rich. Coſin*'s Book entitled (*b*) *Eccleſiæ* Anglicanæ *Politeia in Tabulas digeſta.* How Juſtice is adminiſter'd in theſe Courts in Relation to Advowſons, Incumbency, Tithes, &c. may be known from Sir *Simon* (*c*) *Degge's* Parſon's Counſellour, *J. Dodridge's* (*d*) Complete Parſon, *W. Hughes's* (*e*) Parſon's Law, *W. Sheppard's* (*f*) Parſon's Guide, *G. Meriton's* (*g*) Parſon's Monitor, and *J.* (*h*) *Godolphin's Repertorium Canonicum*: And, for the right Determination of Cauſes relating to Eſpouſals and Matrimonial Contracts, the Eccleſiaſtical Judge can hardly have a ſafer Rule than is preſcrib'd by *Henry Swinburn*, in his Treatiſe (*i*) on that Subject; wherein the moſt Intricate

(*a*) See his Printed Diary. p. 19. (*b*) Fol. Oxon. 1684. (*c*) 8°. pret 4 *s.* (*d*) 8°. pret 1 *s.* 6 *d.* (*e*) 8°. pret. 2 *s.* (*f*) 12° pr. 1 *s.* (*g*) 8°. pret. 2 *s.* (*h*) 4°. pret. 10 *s.* (*i*) 4°. pret. 4 *s.*

Queſti

Queſtions are ſoundly and Religiouſly Stated. In the *Cottonian* Library there are alſo ſeveral MSS, which look this way, and are reckon'd by (*a*) Sir *William Dugdale* amongſt his Law-Books of uncertain Times and Authors; which nevertheleſs ought to be put in the Catalogue of our Church's Apologies. They are theſe: 1. (*b*) *De Poteſtate Regiâ in Eccleſiaſticis.* 2. (*c*) A Volume of Tracts concerning the Jurisdiction of the Clergy; Jurisdiction of Prelates; Prohibitions: Expoſition of Statutes concerning Eccleſiaſtical Cauſes, whether the Interpretation belong to the Judges or Civilians; and Actions for Tithes. 3. (*d*) *Immunitas Clericorum à Juriſdictione Temporali.* 4. (*e*) *Conſuetudo* Angliæ, *ex quâ Occiſor Clerici eſſet ſola excommunicatione feriendus.*

The higheſt Eccleſiaſtical Court in *England* is that of the Convocation, which has always been call'd by the King's Writ, or (as *Bede* (*f*) expreſſes it in the caſe of *Auguſtine* the Monk) *Adjutorio Regis.* It *Convocation*

(*a*) Orig. Jurid. cap. 24. (*b*) *Cleopatra*, E. 6. (*c*) Ibid. F. 1. (*d*) Ibid F. 2. (*e*) *Claudius*, E. 8. (*f*) Hiſt. Eccleſ. lib. 2. cap. 2.

has been allow'd to have a Power of Judging in Cauſes purely Spiritual (*a*) *Juxta Legem Divinam & Canones Sanctæ Eccleſiæ*: But was frequently inhibited, even in the very Writs of (*b*) Summons, from Decreeing any thing to the Prejudice of the King or his Realms. Such was the antient Reſpect paid to theſe Auguſt Aſſemblies, that the prevailing with them to atteſt their (*c*) *Finales Concordiæ* or *Conventiones* (*Fines Levy'd*, as we now call 'em) was thought to be as good and valid, as Solemn and Authentic, as if the buſineſs had been Tranſacted in the King's own Preſence, or before his great Council of Parliament. So that, had we the Journals of Convocations complete, we ſhould thereby receive very conſiderable Light in matters of Civil Hiſtory, as well as in thoſe that more eſpecially relate to the Affairs and State of the Church. The Tranſactions of that under *Henry* the Eighth, in the year 1536. were ſeen and perus'd by the (*d*) Lord *Herbert*, who tells us that

(*a*) Inſtit. par. 4. cap. 74. (*b*) Vid. D. *Gul. Dugd.* Summon. in *Ed.* 1. *Ed.* 2. &c. (*c*) H. *Spelm.* Gloſſar. in voce *Finis.* (*d*) Hiſt. of *Hen.* 8. pag. 405.

the

the King himſelf drew up the Articles of Religion that were paſs'd in it, moderating the Arguments of the Members upon each Queſtion, and adding Animadverſions upon 'em with his own hand. The like he did upon thoſe of 1543. call'd *a neceſſary Defence for all ſorts of People*; as appears by the Book it ſelf, which is ſtill extant in Sir *John Cotton's* Library: Where are alſo ſeveral others of the like kind. What's the preſent Nature, Power and Conſtitution of theſe Courts, has been very much diſputed of late; and the Controverſy has been managed with ſomewhat of an unbecoming bitterneſs and Zeal. The firſt Starter of the Moot-Point was the Author of a (*a*) *Letter to a Convocation-Man* &c. A Treatiſe which pretends to prove, 1. That this Aſſembly has a Right to meet, whenever the Parliament does ſo. 2. That, being thus met, it has alſo an inherent and unalterable Right to the Exerciſe of its Power; ſo as to *confer* (at leaſt) and *treat*, without any formal Licenſe from the King. This

(*a*) 4°. Lond. 1696.

Letter having made a conſiderable Noiſe and Pother in the Kingdom, commended and rail'd at by Men of different Thoughts and Intereſts, was at laſt conſider'd by *Dr. Wake*; who entitled his Anſwer (*a*) *The Authority of Chriſtian Princes over their Eccleſiaſtical Synods conſider'd*, &c. This learned Writer ſhews firſt what Obedience all foreign Councils, both National and Provincial, have always paid to their reſpective Emperours, King's, and other Princes; and then proceeds to prove that the like Authority has been, in all Ages, exercis'd by the Monarchs of this Realm: Inſomuch that our Convocations could never *meet* without the King's Writ of Summons, nor ever *act* without his Permiſſion. In Reply to this was Publiſh'd (*b*) *Municipium Eccleſiaſticum*, by a warm Author in Ambuſcade; who is pleas'd to tell the World that *the Church of* England *ſuffer'd more by the Doctor's Book, than by all other Lay or Law Oppoſitions whatſoever.* This, being onely the Firſt Part in Three of

(*a*) 8°. Lond. 1697. (*b*) 8°. Lond. 1697.

what

what was Projected on this Occaſion, goes no farther than a General Narrative of the Nature of theſe Divine Powers wherewith the Churches of Chriſt are inveſted: Whereas the main of the Quarrel, about matters of Fact in Eccleſiaſtical Hiſtory, is ſtill reſerv'd for the Subject of a Second Adventure; and, when that's happily finiſh'd, we may hope for a Third, which will demonſtrate the preſſing Neceſſities we are now under of having a Convocation to ſit and act. In the mean time, the Doctor (in his (*a*) *Appeal to all the true Members of the Church of* England) has kindly Pointed to him moſt of thoſe Writers which may create him any Diſturbance in the framing and finiſhing of his Second Part: Which can never be effectually completed, till he either proves that thoſe great Men are miſquoted or miſrepreſented; or elſe that they are under a Notorious Error in their Common Doctrine of the King's Supremacy, and that all our Doctors ſince the Reformation have conſpir'd together againſt the

(*a*) 8°. Lond. 1698.

Sacred Authority of the Eccleſiaſtical State. From the (a) Letter lately Publiſh'd in the Name of *Mr. S. Hill* Rector of *Kilmington*, one would imagine that the remaining Parts of the unfiniſh'd Anſwer go but ſlowly on; and that the Author's chief Talent (as his unknown Friend obſerves of him) lies in *making dareing Attempts upon formidable Adverſaries.* Before he advances any farther in theſe *Attempts*, he may do well to conſider the plain Diſtinction betwixt thoſe Convocations that are call'd by the King's Writ to the Biſhops as Members of Parliament, and thoſe that are Summon'd onely by his Writ to the two Archbiſhops: And, having found that theſe latter are indeed the true *Engliſh* Convocations, properly ſo call'd, he will allow their Juſt Definition (wherewith Dr. *Wake* has not been able to pleaſe him) to be (b) *Occaſional Aſſemblies of the Biſhops and inferiour Clergy for ſuch purpoſes as the King ſhall direct when they meet.*

(a) *Rites of the Chriſtian Church further defended* &c. 8°. Lond. 1698. (b) See B. *Stillingfleet's* Rights of Paroch. Clergy, p. 364, 365.

The

The Court of Delegates is erected by vertue of a (*a*) Statute which ſaies, that *for lack of Juſtice in any of the Courts of the Archbiſhops, upon Appeal to the King's Court of Chancery, Commiſſions ſhall be directed under the great Seal to ſuch Perſons as the King ſhall Name; whoſe Decree ſhall be Good, Effectual and Definitive.* It has alſo been (*b*) approv'd (tho' the Act of Parliament takes no notice of any ſuch matter) that Appeals do not onely ly to this Court from the Archbiſhops, but alſo from the Court of Admiralty: And, tho' the Statute ſaies that Decrees in this Court ſhall be *Definitive*, yet the (*c*) Judges have maintain'd that the King may ſtill (as the Pope uſed to do heretofore) grant a new Commiſſion *ad Revidendum*. The Eſtabliſh'd Doctrine of the King's Supremacy, whereon the Authority of this Court is founded, was at large aſſerted by *Will. Prynne*; who has furniſh'd us with Three Voluminous Tomes of an exact Chronological Vindication and Hiſtorical Demonſtrati- *Delegates.*

(*a*) 25. *Hen.* 8. cap. 19. (*b*) Inſtit. Par. 4. cap. 74. (*c*) Term. Trin. 39. *Eliz.* in B. R.

on

on of our *Britiſh*, *Roman*, *Saxon*, *Norman* and *Engliſh* King's being Supreme in and over all Spiritual or Religious Affairs, Cauſes, Perſons, &c. The (*a*) Firſt of theſe begins at the firſt planting of Chriſtianity in this Iſland, and reaches to the end of *Richard* the Firſt's Reign: Whence the (*b*) Second (which was firſt publiſh'd) continues the Story and Precedents down to the death of *Henry* the Third. Moſt of the Copies of theſe two Tomes periſh'd in the dreadful Fire of *London*; and no man has hitherto thought it worth his expence and while to give us a new Edition, from any of the few that eſcaped. His (*c*) Third has enough (in all Conſcience) to ſatisfy any reaſonable Reader; and ſuperſede his Enquiry into the State of the caſe, in either former or following Ages. He begins with a long Liſt of the Records of King *John* and *Henry* the Third, which he calls an Appendix to the Second Tome; and then proeeeds (for above a Thouſand Pages) with the like Precedents in the

(*a*) Fol. Lond. 1666. (*b*) Fol. Lond. 1665. (*c*) Fol. Lond. 1668.

Reign

Reign of *Edward* the Firſt. His Deſign is to ſhew how the Pope and Court of *Rome*, the *Engliſh* Clergy and *Scotch* Nobility, uſurp'd upon the Rights of theſe three Kings; and how, on the contrary, they defended themſelves againſt all ſuch Perfidious Encroachments. After the Author's death, his Executors (into whoſe hands moſt of the Impreſſion fell) put a new Title to the Book and call'd it (*a*) *The Hiſtory of King* John &c. in hopes that, appearing in the Shape and Diſguiſe of an Entire Work, it would go off the more readily. Here we have ſufficient Barriers againſt the Pope's Invaſion: But, the Supremacy having been alſo invaded by the People, it was neceſſary that this Diſpute ſhould be likewiſe ſet in a Juſt Light; and Royalty aſſerted againſt the *Engliſh* as well as foreign Uſurpers. This was done by *R. Sheringham*, Fellow of *Cai's* Colledge; who, being in Exile with his Soveraign, and finding a pretended *Engliſh* Parliament careſs'd by the States of *Holland* as the Supreme Go-

(*a*) See his Title-Page, Printed 1670.

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vernment of this Nation, resolv'd to do what he could to undeceive those that were Strangers to our Constitution. His (*a*) Book shews his intimate Acquaintance with the Laws of *England*; and learnedly overthrows the Arguments of those restless and Anti-Monarchical Scribblers that (at that time) distracted the Age with their Impertinent and mad Discourses about Coordination of the three Estates, Superiority of the King's Court over his Person, &c.

High-Commission. The Court of *High-Commission* was (*b*) erected out of a (*c*) Necessity of the Times; since the Bishops and most of the Clergy were to be depriv'd, and yet the old Methods of Justice would not do the Work. The Commissioners had Power to execute all manner of Spiritual Jprisdiction under the Queen; and to reform all Heresies, Schisms, Contempts, &c. but (as was declar'd by the (*d*) Judges, and amply prov'd by (*e*) *Nic. Fuller*)

(*a*) The King's Supremacy asserted, 4°. Lond. 1651. 1682. (*b*) St. 1. Eliz. cap. 1. (*c*) Instit. Par. 4. cap. 74. (*d*) Term. Pasch. 9. Ja. 1. (*e*) Argument, &c. 4° print. 6 d.

had

had not any Authority to fine and imprison at such a rate as was afterwards Practis'd. Before Chancellour *Egerton*'s time none of their Commissions were enroll'd, nor are now to be found; so that 'tis not certainly known what Powers were granted them. But it appears that they took cognisance not onely of Adultery, Fornication and some other Grosser Faults, but also of petit and trifling Cases of Assaults, Defamation, working on Holy-days, &c.

Each of the two Archbishops has a *Prerogative-Court*; wherein all Wills are to be prov'd, and Administrations granted, where the Party deceas'd had *bona Notabilia* in some other Dioceſe than that wherein he dy'd. The Probate of every Bishop's Will, or Administration of his Goods, is also to be had at these Perogative-Offices. That for the Province of *Canterbury* is kept in Dean's Court near St. *Paul*'s Church in *London*; where (*a*) any Will may be copy'd *Archbishops.*

(*a*) Vid. D. *Chamberl.* Not. Angl. Edit. 16. p. 276, 277.

which

(which is here provable) since *Wat Tyler's* Rebellion. The Court of *Arches* (or *Arcubus*) has its Name from *Bow-Church*, wherein the Dean of the Arches keeps it; that Pariſh, with twelve more in *London*, being under the peculiar Jurisdiction of the Archbiſhop of *Canterbury*. The Judge has Ordinary Jurisdiction (over theſe Pariſhes) in Spiritual Cauſes of the firſt Inſtance; and, by Appeal, his Power may be extended throughout this whole Province. The *Court of Audience* is kept by the Archbiſhop himſelf in his own Palace, and meddles not with any thing of Contentious Jurisdiction, but Matters of Form onely and Voluntary; ſuch as Confirmations of the Elections of Biſhops, Conſecrations, Guardianſhip of the Spiritualties of his Suffragans *ſede vacante*, Inſtitutions, Collections, &c. and the Records that relate to theſe are commonly in the Cuſtody of the Archbiſhop himſelf, or His Secretary, and rarely tranſmitted into any Regiſter's Office.

Conſiſtories. The Courts of the Suffragan-Biſhops of both Provinces are not onely held before

before the Chancellours of the ſeveral Dioceſes, but alſo (in ſome large ones) before the Biſhop's Commiſſary; whoſe (*a*) Juriſdiction extends to ſuch Places as are ſo remote from the Cathedral that the Chancellour cannot call them thither without great Travel and Vexation. 'Twas about the Eighteenth year of *William* the Conquerour's Reign that (by Advice of his Archbiſhops, Biſhops, Abbots and Princes of the Kingdom) it was provided that theſe and the County-Courts ſhould be Separated. The Records of that Parliament are now loſt: But the very words of ſo much of 'em, as related to this Particular, have been preſerv'd in a Charter granted by that King to *Remigius* Biſhop of *Lincoln*; which tells us that therein 'twas provided, (*b*) *Ut nullus Epiſcopus vel Archidiaconus de Legibus Epiſcopalibus amplius* in Hundred *Placita teneat, nec cauſam quæ ad Regimen Animarum pertinet ad Judicium Sæcularium omnium adducant; ſed quicunque ſecundùm Epiſcopales leges de quacunque cauſa*

(*a*) Vid. Inſtit. par. 4. cap. 74. (*b*) Vid. Reliq. Spelm. pag. 131.

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vel culpâ interpellatus fuerit, ad locum quem ad hoc Epiſcopus ei elegerit et nominaverit, veniat, ibique de cauſâ vel culpâ ſuâ reſpondeat. The Biſhops were not (in thoſe days) furniſh'd with any ſuch Subordinate Judges in theſe, as Vicars-General, Chancellours, Commiſſaries, &c. Which were never heard of (at leaſt, in this Kingdom) till about the (*a*) middle of *Henry* the Second's Reign, when their conſtant attendance at Court put them upon a neceſſity of committing the Adminiſtration of Juſtice in their Dioceſes to other People. The Methods of Proceeding here uſed, with a view of the Matters Tranſacted and Recorded, are to be learn'd from *Hen. Cary*'s (*b*) Law of *England*, or true Guide for all Perſons concern'd in Eccleſiaſtical Courts; *Fr. Clark*'s (*c*) Praxis; and *H. Conſet*'s (*d*) Practice of the Spiritual Courts.

Archidiac. cons.

'Tis lately aſſerted by a (*e*) great Man, that, in the *Saxon* times, the Archdeacons had no Jurisdiction; their

(*a*) See B. *Stillingfl.* of Eccleſ. Caſes, p. 147. (*b*) 12°. pret. 10 *d.* (*c*) 4°. pret. 5 *s.* (*d*) 8°. pret. 6 *s.* (*e*) B. *Stillingfl.* Eccleſ. Caſes, p. 146.

whole

whole buſineſs being to attend the Biſhop at Ordinations and other public Services in the Cathedral. In the Province (*a*) of *Canterbury*, he ſaies, their Courts were firſt erected by *Lanfranc*: who, by the way, is repreſented by (*b*) Sir *William Temple* as a Perſon of an *approv'd Wiſdom* and Maſter of all theſe other excellent Qualifications that are deſireable in a good Prelate and truſty Councellour. The like was done by his Cotemporary Archbiſhop *Thomas* in the Province of *York*: And the two Reaſons alledg'd for this Reformation, are 1. *The laying aſide the* Chorepiſcopi *in the Weſtern Parts, as aſſuming too much to themſelves.* 2. *The Public Services which the Biſhops were more ſtrictly tyed to, as the King's Barons, in the* Norman *Times.* There's ſeveral times mention made of theſe Courts, as well known and allow'd on, in the Famous Conſtitutions of *Clarendon* and *Henry* the Second; but I ſhall onely deſire the Reader to take notice of the tenth, *De Appellationibus, ſcubi emerſerint, ab Archidiacono debent*

(*a*) Hoc è fragm. MS. Bibl. Cott. Edit. in Angl. Sact. Tom. 1. p. 150. (*b*) Introd. to Engl. Hiſt. p. 234, &c.

ad Episcopum &c. Which is still the Practice. 'Twas not the Design of these Constitutions (as is well known) to enlarge the Jurisdiction and Authority of Ecclesiastical Judges, but rather to correct and restrain their Usurpations upon the Temporal Power; and therefore it may justly be believ'd that the Archdeacons had formerly presided in those Subordinate Courts, which are here hinted at and approv'd: So that a (*a*) learned Person seems to be mistaken in his Calculation, when he dates the Original of that Judicial Power which the Archdeacons now have in our Church from their *Invasion* and *Intrusion* upon Rural Deans, sometime after the year 1236. Nor can I see how either Legate *Otho*'s Injunction, or the Gloss upon it, gives any Countenance to his opinion in making this a *New Office*. The Commentator especially appears to me to be of a quite different Judgment: For, having put the (*b*) Question, whether the Monks might prescribe against the Archdeacon's Visitation of their appropriated

(*a*) W. *Kennet*. Paroch. Antiq. p. 643. (*b*) Gloss. in Constit. de Archid. ver. *Visitant.*

Livings? He anſwers, *Videtur quod non: cum ejus Superioritas, ſicut Epiſcopi, ſit Juris communis.* I ſhall eaſily agree that, about this Time, the Supine Negligence of the Archdeacons themſelves, and the Groſs Corruptions of their Officials and other Officers (who minded little more than what the Gloſs calls *Lucrum Pecuniarum*) might Squander and loſe moſt of the Records of theſe Courts: Or otherwiſe, I know not but we might have their Acts as entire, and of as old a date, as any of thoſe in the Conſiſtories of our Biſhops. In their Regiſters we ſhould have Inquiſitions *de Jure Patronatûs*, Preſentments, Schedules of the Ornaments, and Terriers of the Gleab-Lands, &c. The beſt Account of their Procurations is given by (*a*) *Jo. Stephens*; who, having been engaged in many Conteſts about them in the Archdeaconry of *Gloceſter*, took the Pains to make a full Enquiry into the Legal State of ſuch Payments here in *England*. In handling of which Debate, he anſwers theſe three Queſtions: 1. What

(*a*) Hiſtorical Diſcourſe of Procurations. 4°. Lond. 1661.

a *Procuration* is, and in what manner it was antiently Paid ? 2. Whether it be due *ratione Viſitationis ?* 3. Whether onely ſo due, and no otherwiſe? Having largely and learnedly determin'd theſe Points, he Subjoyns the Famous Caſe (*a*) of *Proxies* between the King and Sir *Ambroſe Forth* ; and, in the Concluſion, adds two more of his own Diſcourſes about Synodals and Pentecoſtals.

Wills. Not to trouble our ſelves with the harſh Diſtinction of *Intrinſical* and *Extrinſical* Juriſdiction in Teſtamentary Cauſes, 'tis enough for our preſent purpoſe that it be allow'd us that the former (or the Probate of Wills) ſeems to be as antient in the Biſhop's Court as the forementiond Separation of that from the *County* by the Conqueror. 'Tis plain the Practice ran ſo in (*b*) *Glanvil*'s time, under *Henry* the Second ; and he ſpeaks of it as a ſetled and uncontroverted Point. That Reign was the moſt remarkable for ſharp Conteſts and Feuds

(*a*) Term. Trin. 2. *Jac.* 1. in *Scacc.* (*b*) Lib 7. cap. 6, 7, & 8.

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betwixt the Civil and Eccleſiaſtical Lawyers; and yet we do not hear that this Right was ever deny'd to the Churchmen. Sir *Hen. Spelman* has left us a (*a*) learned Diſcourſe on this Subject; wherein he ſhews that the *Goths* and *Normans* had the Uſage of proving their Wills in preſence of their Clergy only (and a Notary Apoſtolic) long before the Conqueſt. The way, he ſaies, in *Normandy* was to do it before the Curate or Vicar of the Pariſh where the Teſtator liv'd; which is a Method ſtill preſcrib'd to in ſome peculiar Pariſhes in this Kingdom. It is therefore poſſible that we may meet with the Originals of ſome Wills, and Copies of others, in our Eccleſiaſtical Courts, as antient as our firſt *Norman* Kings: Tho' a moſt diligent (*b*) Searcher after ſuch Records, as well as others of all Nations and Languages, aſſures us that he could never ſee an expreſs Probate elder than about the time of *Henry* the Third. Adminiſtrations granted

(*a*) Vid. Reliq. *Spelm.* pag. 127. &c. Vid. etiam *G. Linwood* Tit. de Teſt. Cap. *Stat.* verb. *Eccles. Libert.* (*b*) *Seld.* Juriſd. of Teſt. cap. 6. ſee alſo *Prynn's* Rec. of Ed. 1. p. 139, 140.

of Inteſtate's Goods, by the ſame Powers, are probably as antient; and therefore we may confidently ſearch for Inventories of ſuch as old as any of the aforeſaid Wills. So much I think may reaſonably be inferr'd from that clauſe in King *John*'s Charter, *ſi aliquis liber homo inteſtatus deceſſerit, Catalla ſua &c.* Per viſum Eccleſiæ *diſtribuantur*: For, ſince this was a Confirmation of thoſe Liberties which the Barons of *England* claim'd as their known Rights in the days of his Anceſtors, it looks very probable that the Church had likewiſe challeng'd and enjoy'd thoſe Powers that are here granted Her. I know this is an Inference that's not allow'd on by *Mr. Selden*, in his (*a*) Original Juriſdiction of Teſtaments: But that great Man was under ſome invincible Prejudices againſt our Eccleſiaſtical State, which would not ſuffer him to be Himſelf when he treated of Affairs of that Nature. How our Law ſtands in Relation to theſe, may be ſeen in (*b*) *Hen. Swinburn*'s Elaborate Trea-

(*a*) In two Parts, Fol. Lond. 1683. (*b*) 4°. pret. 10*s.*

tiſe

tiſe on Wills and Teſtaments; *J. Godolphin's* (*a*) Orphan's Legacy; *G.* (*b*) *Meriton's* Touchſtone; and *Tho. Wentworth's* (*c*) Office and Duty of Executors. This laſt was an Eminent Lawyer, and Recorder of *London*, in the beginning of King *James* the Firſt's Reign; and has given excellent Directions to Teſtators for the better choice of Executors and Contrivance of their Wills.

Mr. Selden's (*d*) Hiſtory of Tithes was what, moſt of all his Works, blaſted his Credit, and expos'd him to Penance as well as Cenſure: For the High Commiſſion preſently oblig'd him to a public acknowledgment of his Offence, in thoſe Scandalous (*e*) Reproaches he caſt upon the Clergy, as generally blokiſh and idle. This Treatiſe was immdiately fallen upon by ſeveral learned and Vigorous Opponents. *R. Tildeſley*, who wrote (*f*) *Animadverſions* upon it, taking to task the Law-Part, as *S. Nettles* did the Rabbinical, who was Archdeacon and *Tithes.*

(*a*) 4°. pret. 6 *s.* (*b*) 8°. pret. 1 *s.* 6 *d.* (*c*) 8°. pret. 2 *s.* (*d*) 4°. Lond. 1618. (*e*) In Præfat. (*b*) 4°. Lond. 1619.

Prebendary of *Rocheſter*; where he had the Convenience of thoſe Records which were of mighty uſe to him in the compileing of that work. *R. Mountagu's* Book bears the Title of (*a*) *Diatribæ upon the firſt Part of the late Hiſtory of Tithes*, and is onely a Supplement (of three Chapters) to what *Dr. Tildeſley* had before publiſh'd; having little or nothing from the Records of this Kingdom, and ſeems to have been Printed cheifly for its bringing abroad with it its Vaunting Preſatory Addreſs, ſtuff'd (according to the mode of thoſe times) with a deal of Philological Learning. *Selden's* Hiſtory was reprinted in the year 1680. tho' the Title-Page diſſembled the matter, and pretended that the Copies now diſtributed were onely a newly diſcover'd Store of the former Edition. This gave occaſion to a freſh (*b*) Vindication of the Divine Right of Tithes by *Dr. Comber*, the preſent learned Dean of *Durham*; who Ingenuouſly confeſſes that, in what relates to our *Engliſh* Records, he had

(*a*) 4°. Lond. 1621. (*b*) 4°. Lond. 1681.

no

no other Helps than what he borrow'd from *Tildeſley*, the *Monaſticon* and *Selden*'s own Quotations. Another Anſwer was framed by *Will. Sclater*; whoſe (*a*) *Arguments about Tithes* are not thought to be ſo Valid and Conſiderable, as what has been advanced by the four learned Perſons abovemention'd. *M. Selden* had undoubtedly a deal of Reſentment in him, againſt the eſtabliſh'd Churchmen, when he wrote his Book: But it can hardly be ſuppos'd that 'twas intended to gratify the Presbyterian Party; who never boggled at the receiving Tithes in full, as the moſt comfortable Support of their Miniſtry. One of the Chief Bell-Weathers of that Faction, Dr. *Cornelius Burges*, has carry'd the Point higher than the warmeſt of our Epiſcopal Writers; affirming, in his (*b*) *New Diſcovery of Perſonal Tithes*, that the Tenth Part of the clear gains of Servants and Day-Labourers are due to the Parſon, both in Conſcience and by the Laws of this Kingdom. 'Tis true this Treatiſe was

(*a*) 4°. Lond. 1623. (*b*) 8°. Lond. 1625.

pub-

publiſh'd before its miſcheivous Author had openly deſerted our Church's Communion, and whilſt he was Chaplain to King *Charles* the Firſt: But we do not hear, that, even after his Traytorous Deſertion of his Mother and (the Father of his Country) his own Royal Maſter, he ever recanted that Doctrine; tho' he zealouſly preach'd up the Alienation of the Lands of Biſhops and Deans and Chapters, himſelf coming in for a ſhare in the Spoil, contrary to his avow'd Opinion in former days. The Miſchief that has accru'd to the Church of *England* by Appropriations, and the Scandal of our Reformation in continueing the Sacrilege by our many impropriated Tithes at this day, is well treated on by an (*a*) ingenious and learned Perſon, who deſigns a more diſtinct (*b*) *Hiſtorical Account* of theſe matters; wherein poſſibly may be brought to Light the long conceal'd MS. (*c*) *Whip for Sacrilege*, which was written by *John Reading* (Prebendary of *Canterbury*) againſt

(*a*) *W. Kennet*, Paroch. Antiq. pag. 433. &c. (*b*) Ibid. 445. (*c*) Vid. Ath. Oxon. lib. 2. p. 289.

An-

Anthony Perſons's great Caſe of Tithes. Till this is done, we may reaſonably content our ſelves with what is already given us by Sir *Henry Spelman*; in his three excellent Treatiſes on the ſame Subject, (*a*) *Denon temerandis Eccleſiis*, his larger (*b*) Work of Tithes, and his (*c*) Hiſtory and Fate of Sacrilege. The beſt account of the preſent State of our Tithes (both as to the Foundation in our Laws, whereon they ſtand, and the Rules that are to be obſerv'd in looking after them) is lately given by the moſt learned Biſhop (*d*) *Stillingfleet*; who never fails of exhauſting whatever Subject he pretends to treat on.

The Vice Chancellour's Courts, in both our Univerſities, are of great Antiquity; and ſhould afford us ſome valuable Records. In the Caſe of (*e*) *Wilcocks* againſt *Bradel*, by the Charters of the Univerſity of *Oxford* then produced, it appear'd that they had been long empower'd to enquire of *Univerties.*

(*a*) 8°. Lond. 1613. (*b*) 4°. Ibid. 1646. (*c*) 8°. Lond. 1698. (*d*) Eccleſ. Caſes, p. 254, 255, &c. (*e*) *Croke's* Rep. Term. Trin. 3. Car. 1.

all

all Treſpaſſes, Injuries, Pleas and Quarrels, and of all other Crimes and Matters (except Pleas of *Frank-tenement*) where a Scholar or their Servants or Miniſters *ſunt una partium & Cognitionem & correctionem inde habend. Secundum eorum Statuta vel Conſuetudines, vel ſecundum Legem Regni noſtri Angliæ, ad voluntatem Cancellarii; Ita quòd Juſticiarii de Banco Regis ſive de Communi Banco, vel Juſticiarii de Aſſiſis non ſe intromittant.* It likewiſe appear'd that theſe Charters were confirm'd by (*a*) Act of Parliament, wherein they were particularly and *Verbatim* recited. But we are not to eſtimate the utmoſt Age of the Records of this Court from what was alledg'd at that Tryal: For in *Halley*'s Caſe, (*b*) the ſame year, a Charter was produced, bearing Date in the third of *Richard* the Second; and we alſo (*c*) know the like was granted by his Grandfather, *Edward* the Third, in the year 1331. So that thus † high (at leaſt) we might hope

(*a*) St. 13. Eliz. (*b*) *Croke*. Term. Mich. 3. Car. 1. (*c*) Vid. Hiſt. & Antiq. Oxon. Par. 1. p. 164. † Nay, as high as 3. *Ed* 1. as appears from *Prynne*'s Records of that King. p. 162. 363.

for

for Information from the Regiſters of this Court; if they had been continu'd completely down to our Times.

Regiſters in Churches (of Weddings, Chriſtnings and Burials) were firſt appointed to be kept in the year (*a*) 1538. juſt upon the Diſſolution of Monaſteries; and, ſince that time, have prov'd ſome of our beſt Helps towards the preſerving of Hiſtory. Their Uſe might be of a yet farther extent, if care were taken to regiſter alſo many other remarkable Occurrences relateing to the Public Concerns of the Several Pariſhes; as Recoveries of Benefactions, Properties in Seats or Iſles, Rights of Advouſon, &c. But 'twill be our everlaſting Reproach, if (inſtead of thus improving the good Deſigns of our Anceſtors, for the continuance of their Names and Memories) we ſhall omit even that Part of our Duty which is now injoyn'd by an (*b*) Eccleſiaſtical as well as Civil Authority, and record Matters in our Church-Books after ſuch a Manner as will only ſerve to render them

Regiſters in Churches.

(*a*) *J. Speed*, in Hen 8. §. 100. (*b*) Vid. Conſtit. Eccles. A. D. 1603. Can. 70.

Mo-

Monuments of our own Negligence. For a Collection of antient Uſages in Preſentations by Lay-Patrons the Reader may conſult (*a*) *W. Prynne*'s Book entitled *Jus Patronatus*: Or (as he is pleas'd to expound thoſe two words) a brief, legal and rational Plea for Advowſons and Patrons antient, lawful, Juſt and Equitable Rights and Titles to preſent Incumbents to Pariſh-Churches or Vicarages upon Vacancies, &c.

(*a*) 4°. Lond. 1649.

CHAP.

CHAP. VII.

Of Conveyances, Deeds and other Evidences, in the hands of private Subjects.

THE Miſeries of our many Civil Wars muſt be preſumed to have deſtroy'd vaſt Numbers of Papers relateing to the Affairs of private Families, as well as more Public Records; eſpecially when we conſider the Several Forfeitures and Sequeſtrations to which (at ſome time or other) all that are of any Note have been expos'd. But the ſuddain Subverſion of Monaſteries, together with the Havock that it made of Regiſtries of a more general Nature, did alſo occaſion a heavy Deſtruction of theſe uſeful Materials for Hiſtory; ſince many of the moſt conſiderable *Engliſh* Families had committed their beſt (*a*) Evidences to

(*a*) Vid. Rites &c. of the Ch. of *Durham*. p 132.

the

the Cuſtody of the Monks, in whoſe hands they thought them ſafer than at Home. The ſmall Scraps of Parchment and Paper, wherein theſe were commonly written, were more lyable to be loſt and Squander'd than the more bulky Inſtruments of our dayes: For our forefathers uſed ſuch ſhort, ſimple and confideing Forms of Conveyance, as ſufficiently prov'd that they were not upon the Catch, nor expected any Advantage by their Skill in Querks, and the nice wording of their Deeds. *W. Sheppard*'s (*a*) Law, and (*b*) Touch-ſtone, of Common-Aſſurances, would have been uſeleſs Pieces in thoſe Ages; when all manner of Feoffments, Gifts and Grants, ran in as few and eaſy Terms as the firſt Bargains (that occaſion'd them) were or could be concluded, An eminent Antiquary has floridly declamed againſt Degeneracy in this matter, from the laudable Practice of our Anceſtors, in this Panegyrick upon their contrary Methods and Management: (*c*) *Quàm facilis & apicibus Juris ſoluta, videre*

(*a*) Fol. pret. 14. (*b*) 4°. pret. 10 *s.* (*c*) *J. Seld.* Jan. Angl. lib. 2. pag. 70.

eſt,

ejus Dominii fuit translatio, simul & à perplexantium captiosâ malitiâ, turgescentibusque membranarum fasciis & Polypychis libera. And (*a*) another, who himself was a great Master of that Primitive Integrity which he observ'd in the Men of old, takes Special Notice of the vast *Difference between the Candid Simplicity and Plainness of those elder Times (when Conscience was accounted the best Evidence) and the Serpentine Subtilty of these, when no Conveyance but in Folio; when an Acre of Land cannot pass without almost an Acre of Writing, &c. their honest meaning going farther, in point of security, than our much writing now; whilst their plain dealing supply'd and made up what was wanting either in Matter of Form or Multitude of Words.*

Whether the *Norman* Nobility brought their use of large Seals into this Kingdom, or found it here, I am not very certain: But here they had them, presently after their Arrival; the most usual Impresses being an arm'd Knight on Horse-back, with a drawn *Seals.*

(*a*) *W. Somner* of R. Ports in *Kent.* p. 71. See also *Cambd.* Brit. N E. p. 344, 345.

Sword and the Bearer's Name; As, *SIGILLUM ROBERTI DE VALLIBUS.* &c. Perhaps the large Territories, wherewith the Conquerour rewarded their Services, induced them to believe themselves advanced to so many Principalities; and this conceit might incline them to rival their Soveraign himself in the Grandeur of their Public Instruments. Sometimes, instead of the Horseman, we have a Lion, Leopard, Greyhound, Bird or other Device, part of the Arms of the Family; but always the Person of Honour's own Proper Name incircling his Paternal Coat, or whatever other Impression he was pleas'd to fancy. Seals of a round (*a*) Form generally betoken'd something of Royalty in the Possessor, and a more than Ordinary Extent of Temporal Jurisdiction: Whereas great Ladies under Coverture, and Bishops, Abbots, &c. commonly made use of oval ones. The Bishops of *Durham*, as Counts Palatine, had round ones; bearing the Bishop sitting in his Chair, circumscrib'd

(*a*) See Tit. of Hon. pag. 532.

with

with his Name *Dei gratia Epiſcopus Dunelmenſis*; and (on the Reverſe) an arm'd man on Horſeback, with his Sword drawn, and the Biſhop's Arms (either of his See or Family) on the Shield, circumſcrib'd as before. If the Grantor's Quality was mean, and his Family too Inconſiderable to bear Arms, the Conveyances were uſually ratify'd under the Authentic Seal of ſome Public Officer or Corporation; the reaſon being alledg'd in theſe or the like words, *Quia Sigillum meum penitus eſt ignotum, Sigillum Officialis de N. apponi Procuravi.* From the frequency of theſe Subſcriptions, and other Arguments of leſs conſideration, ſome have (*a*) affirm'd that the common uſe of Seals did not prevail in *England* before the Reign of *Edward* the Third: And there's a Paſſage in a MS. Hiſtory of *Battail-Abbey* which ſeems to countenance that Opinion. It tells a ſtory of an inferiour Fellow's being reprimanded by *Richard Lucy* (Lord Chief Juſtice under *Henry* the Second) for dareing to uſe a private Seal; which,

(*a*) *W. Lambard's* Peramb. of *Kent.* Edit. 1596. pag. 404, 405, 406.

as he obſerv'd to him, was the Proper Perogative of the King and Peers of the Realm. The matter of Fact, as it there ſtands, is but lamely reported; and 'tis hard to draw any certain Concluſion from it. The man (*a*) perhaps was cenſur'd for unjuſtly uſurping another's Signet, and Coat of Arms; Or, it may be, he had inſolently taken upon him to uſe a greater Seal than became his Quality: For the Nobility, and other Perſons of Rank and Family, had their larger and leſs Seals, the former giving the Impreſſion of their Anceſtor's Coat, and the latter any little Device without a Scutcheon. This is prov'd from an entry on an old Record, which runs thus: (*b*) Johannes *de* Burgo *cognovit quòd apposuit parvum Sigillum ſuum cuidam Scripto quod fecit Decano & Capitulo de* Lichefeud, *de Confirmatione & quieto clameo de Advocatione de* Herdel, *& apponet Sigillum ſuum magnum prædicto ſcripto circa tertiam Septimanam poſt Paſcham.* Others have thought that none below the Degree of a Knight-Bachelour was anti-

(*a*) Vid. Tit. of Hon. p. 652. (*b*) Placit. apud *Weſtm.* Term Hil. 44. Hen. 3. Rot. 28.

ently

ently Priviledg'd to uſe a Seal: And this fancy ſeems to be ſupported by a Clauſe added to a Charter given by *Huſculph de Soligne* Lord of *Dol* in *Bretagne* to the Abbey of *Vieuville*, about the year 1170. (*a*) *& quia adhuc* Miles *non eram, proprium Sigillum non habebam, quando hanc conceſſionem fecimus, authoritate Sigilli Domini* Johannis *Patris mei Cartam illam Sigillavimus.* Agreeable to which, and of an elder Date, is that in the old Lieger-Book of (*b*) *Abingdon* from *Richard* Earl of *Cheſter* (under King *Henry* the Firſt) and his Mother the Counteſs Dowager; which is there reported to have been ſeal'd by the ſaid Earl with the Counteſs's Seal: And the reaſon aſſign'd is, *nondum enim militari Balteo cinctus eſt*; Nay, and 'tis likewiſe added that *literæ quælibet ab eo directæ materno Sigillo includebantur.* From this latter Paſſage *M. Selden* thinks it probable that Infants (in thoſe times) were not allow'd to have any Seal of their own, being oblig'd to have continual recourſe to thoſe of their Guardians or Tutors;

(*a*) Tit. of Hon. Par. 2. cap. 3. p. 459. (*b*) Ibid. p. 651.

and that out of a very Prudential Consideration, to prevent the Inconveniencies that Youth and Indiscretion might otherwise bring upon them. The former Expression proves also that the Earl was now under a Legal, as well as Natural, Non-age: For the Nobility were sometimes Knighted in their Childhood; and, whenever that Honour was conferr'd, it always (amongst its other Privileges) brought a Supply of full Age. Notwithstanding these seeming Objections, and whatever Surmises of the like kind may be raised, we are pretty sure that the antient use of Seals in this Nation was general; and that from the most Early times, after the coming in of the *Normans*. *Ingulphus*, speaking of the many *English* Customs that were abolish'd here upon the Conqueror's Arrival, says expressly: (a) *Chirographorum confectionem* Anglicanam, *quæ antea usque ad* Edwardi *Regis tempora fidelium præsentium Subscriptionibus cum crucibus aureis aliisque sacris signaculis firma fuerunt*, Normanni *condemnan-*

(a) *Ingulf.* Hist. Edit. *Francof.* p. 901.

tes,

tes, Chirographa Chartas vocabant; & chartarum firmitatem cum cerâ Impreſſione per uniuſcujuſque ſpeciale Sigillum, *ſub inſtillatione trium vel quatuor teſtium aſtantium, conficere conſtituebant.* That this Uſage was obſerv'd in the next following Reigns, we are ſufficiently aſſur'd by the Evidence that was then admitted at Common-Law upon Deeds or other Securities; this being one of their remarkable ways of convicting a Defendant: (*a*) *Ubi Sigillum ſuum eſſe publicè recognoverit in Curiâ, Cartam illam præcisè tenetur Warrantizare, & Conventionem in ipſâ Cartâ expreſſam, ſicut in eâ continetur, omnino ſervare ſine contradictione. Et ſuæ malæ cuſtodiæ imputet, ſi damnum incurrat per Sigillum ſuum malè cuſtoditum.* Theſe laſt words put me in mind of a Paſſage I have lately read, in a Grant bearing Date (not long after *R. Granvil*'s time) in the year 1247. (*b*) *In cujus rei teſtimonium huic Scripto Sigillum meum innovatum appoſui, quia Sigillum quod priùs habui amiſi*: Which ſhews the great Care taken by the Men of that Age to

(*a*) Vid. *R. Granvil.* lib. 10. cap. 12. (*b*) in Cartular. MS. Abbat. de *Holme-Cultram.*

have their proper Seals certainly known, and the ſpeedy pains they took to prevent the miſchief that might enſue upon the caſual loſs of their ſignets. *Bracton* (*a*) likewiſe tells us that all the Deeds in his days (and he flouriſh'd about the very year laſt mention'd) ended either with the aforeſaid Clauſe of *In cujus rei &c*, or, in other words, *quod ut ratum ſit & firmum, huic Scripto Sigillum meum appoſui.* 'Tis plain therefore that Sealing was in Vulgar Uſe long before the days of *Edward* the Third; tho' 'tis alſo certain that there were ſeveral Conveyances which (down as low as his Reign) were admitted as good and Legal, when otherwiſe well atteſted, although they never had any Seals affix'd to them: Theſe being the Grants of ſuch as ſtill adher'd to their old *Saxon* Modes, and ſo retain'd the antient Subſcriptions of Names and Croſſes. There were other Tranſgreſſions of the Common Rule and Practice; as when † *Edward* the Third fancifully gave

(*a*) *Bract.* lib. 2. cap. 16. §. 12. † The like is reported of *W.* the Conq. See his Life in *Speed*, §. 59.

To

To Norman *the Hunter the Hop*
and the Hop Town
With all the Bounds upſide down:
And in witneſs that it was ſooth
He bit the wax with his ſong tooth.

And to *Aubrey de Vere*'s Conveyance of *Hatfield* a ſhort black hatted Knife was affix'd, inſtead of a Seal; the like whereof, in other fond Crotchets, *Mr. Lambard* (*a*) ſays he had met with ſeveral.

The Noble and learned *Du Freſne* (*b*) aſſerts that, after the Conqueſt, there were no Deeds written in the *Saxon* Language: But ſince 'tis evident (what he alſo denies) that there were ſeveral Charters and other Public Inſtruments in that Tongue, for three or four Succeſſive Reigns, we may preſume that all the Private Evidences, which are ſtill to be ſeen in that Language and Character, are not to be condem'd as Spurious. Amongſt theſe, the Grants from the Deeds.

(*a*) Peramb. of *Kent*, pag. 406. (*b*) Vid. *W. Kennet*, in Præfat. ad Antiq. Paroch. p. 7.

No-

Nobility (as well as the King) were usually directed *Omnibus hominibus suis* Francis & Anglis, there being generally a mixture of both Nations in every Barony and Mannor. Donations to Churches began commonly with *Notum sit omnibus* (or *Universis*) *Sanctæ Matris Ecclesiæ Filiis*: And afterwards, about *Henry* the Second's time, *Notum sit omnibus tam præsentibus quàm futuris*; Or *Notum sit Universitati tam Præsentium quàm futurorum*; Or *Sciant Præsentes & futuri.* The Donation-Clause it self ran *Deo & Ecclesiæ de N.* and the Warranty in the Conclusion was as general as heart could wish, *Contra omnes Gentes — Omnes homines & fœminas — Christianos & Judæos.* The dating of them, with Particular Mention of the King's Reign, was hardly ever used before that of *Edward* the First, and not very constantly then neither: For, both in his and in his Son's, we meet with several which have the day of the Month, but not the year. They generally concluded with *His Testibus* &c. till (in the Reign of (a) *Henry* the

(a) Instit. Par. 2. pag. 78.

Eighth)

Eighth) the fashion was brought in of naming the Witnesses under the Deed, and sometimes endorsing their Names. In the perusal of those of elder Date the Reader will find it necessary for him to be well skill'd in the antient modes of contracting words and Syllables; and, to this purpose, a Work of Sir *Hen. Spelman's* (giving a Scheme of these Abbreviations) may be very useful to him 'Tis true, this is not yet Printed: But there are so many (*a*) Copies of it in Manuscript that there can be no great difficulty in procuring one of 'em. Nor will it be amiss to observe to him that, so careful have our Lawgivers been to secure us against being cheated in these matters, the (*b*) Forgers of any Deed, Will or other seal'd writing, whereby another's Right may be molested, are (for the first Offence) to be Pillory'd, their Ears cut off, Noses slit and sear'd with a hot Iron, forfeit their Lands and be imprison'd during Life; and the Second Offence of this kind is Felony. All fraudulent (*c*) Conveyan-

(*a*) Vid. Vir. *D. Hen. Spelm.* per. *E. Gibson.* pag. 15.
(*b*) St. 5. Eliz. cap. 14. (*c*) 13. Eliz. cap. 5. & 29. Eliz. cap. 5.

ces

ces, Deeds of Gift and Alienation, feign'd Bonds and Judgments &c. whereby a Creditor may be defeated of a juſt Debt, are void; and the Party offending forfeits one year's value of the Lands ſpecify'd, and the ſeveral Summs mention'd.

Indentures. Thoſe atteſted Inſtruments that recorded any mutual Contract or Agreement betwixt two ſeveral Bargainers did always (as at this day) conſiſt of a Part and Counterpart, or *Script* and *Reſcript*; wherein our Anceſtors ſeem to have been more cautious and exact than we are, how far ſoever they fell ſhort of us in the wording and Contrivance of their ſingle Deeds. They wrote both Parts of their Articles on the ſame ſheet of Paper, Parchment or Vellum; and, betwixt the two Copies, they drew the Capital Letters of the Alphabet or the word *SYNGRAPHUS*, through which they cut the ſheet aſunder Indenture-wiſe, and ſo were able to prove both Parts by Matching them on any future occaſion. *After this Prudent Cuſtom*, ſays (*a*) *Mr.*

(*a*) Gloſs. ad Antiq. Paroch. voce *Chyrographum.*

Ken-

Kennet, had prevaild for ſome time, then the word Chyrographum *was appropriated to ſuch bipartite Writings*; which he proves out of the *Monaſticon Anglicanum*, and ſome antient Evidences alledg'd in his own Book. And indeed, tho' *Ingulphus* (in the forerecited Paſſage) affirm peremptorily that the *Normans* did change *Chirographa* into *Chartæ*, we do find that the former Word was continued long after his Time: For, in the (*a*) Second Statute of *Weſtminſter*, we read *de Chirographariis pro Chirographo faciendo Statutum eſt quòd de quatuor ſolidis ſint contenti*; and this, in (*b*) another Act of Parliament, is explain'd ſo as to be meant of the Chirographer of the Common-Pleas, who is to have no greater Fee than the ſaid Summ for any Fine levy'd in that Court.

Boundaries.

The committing of Boundaries to writing was undoubtedly in Practice in the *Saxon* Times: ſince (in King (*c*) *Edgar*'s days, above a hundred years before the Conqueſt) we find a Grant of Lands with ſuch a Particular Sur-

(*a*) St. 13. Ed. 1. cap. 44. (*b*) 2. Hen. 4. cap. 8. (*c*) Vid. Reliq. *Spelm.* p. 19.

vey,

vey, which is there call'd the Land-gemark, and the like was made by several of his Successors. Under our first *Norman* Kings, Disputes about these Limits were very Common; so that, in some of the Laws of *Henry* the First, we have this Rule for the Tryal of such frequent Pleas: (a) *Si exurgat Placitum de divisione Terrarum, si interest Barones meos Dominicos, tractetur in Curia mea; & si inter Vavassores duorum Dominorum tractetur in Comitatu.* Fortescue reckons these exact Divisions and Limits as peculiar to the *English* Nation; and amongst the many Advantages she has over her Neighbours. Take the Description he gives of her Usage in his own words: (a) *Villarum metæ, non muris, ædificiis aut stratis, terminantur, sed agrorum ambitibus, territoriis magnis, Hamiletis quibusdam, & multis aliis, sicut Aquarum, Boscorum & Vastorum terminis.*—*Vix in* Anglia *est locus aliquis qui non infra Villarum ambitus contineatur, licet Privilegiati loci quidam infra villas de iisdem Villis pars esse non censentur.* With these we may joyn

(a) Cart. Hen. 1. citat. in Reliq. Spelm p. 58. (b) De Laud. Leg. Angl. cap. 24.

the

the antient *Terriers* of every particular Acre of Ground, Houſes and other Edifices, Demeſne-Lands, Parks, Pawnage, &c. which (if of any conſiderable Age) are uſually drawn according to the fulneſs of that Method which is laid down in the Statute of (*a*) *Extenta Manerii*.

Had Pedigrees been carefully preſerv'd in all the great Families of *England*, I can hardly think of any better old Stores of Hiſtory than they might probably have afforded us, ſince the moſt notable Circumſtances of the Life of any eminent Perſon in the Progeny are uſually recorded there with accuracy and niceneſs: But many of this kind we ſhall not meet with. Sir *H. Spelman* (*b*) found one of 'em in his Native County of *Norfolk*, that of the antient Family of the *Sharnburns*; which ſeems to have been perus'd by (*c*) *Cambden*. Yet this was look'd upon, by its Diſcoverer, as ſuch a Rarity that he has left us this Motto upon it: *Pedigrees.*

(*a*) 4. Ed. 1. (*b*) Reliq. *Spelm.* pag. 188. (*c*) *Brit.* Edit. Noviſs. P. 391.

Non

Non Vulgare vides Monumentum, fortè videbis
Haud duo præterea talia, si qua vides.

Accounts. Old Accounts of Expences and Diſburſements, in the Families of Noblemen and Perſons of Quality, will be of moſt Singular Uſe to our Hiſtorian, who will ſoon perceive what neceſſary Articles the Prices of Food, Cloathes and other Conveniencies of Human Life, the Wages of Servants and Day-Labourers, &c. will make in his Enquiries. We may eaſily believe that, among the *Norman* Nobles, moſt of their Stewards made up theſe in the *French* Language, and there's a better Reaſon aſſign'd for this Practice than for obliging the whole Nation to have her Laws in the ſame Tongue. 'Twas (a) *ne ipſi inde Deciperentur.* But to obſerve, as the ſame Author does, that the generality of our Arithmetical Terms are borrow'd from that People, would tempt one to believe that Book-Keepers were mighty Rari-

(a) *Forteſc.* de Laud. Leg. Angl. cap. 48.

ties

ties in the Times of the *Saxons*; and that there was hardly ſo much of the Myſtery here, before their Arrival, as would ſerve to ſettle the Affairs of a Private Family, much leſs to adjuſt the concerns of the Kingdom. In theſe *Expenſa Domûs* we may (with great Pleaſure and Advantage) ſee how different the rates of Corn, Caſtle, Wool, Leather, &c. were in ſeveral Ages: And this will not only furniſh us with a tolerable Conjecture at the Humours of the Men of thoſe times, but alſo pretty well enable us to calculate the Gradual Improvements that have been made in our Trade and Manufactures, or what we call the *State of the Nation*. The Wages of Servants and other Labourers is what is moſt eſpecially to be noted; ſince the Prices of all other things have been rightly (a) obſerv'd to bear a due Proportion to theſe. Their Hire has been always at dearer Rates, as the plenty of our money grew upon us; and is well known to be extremely enhanc'd ſince the Diſcoveries of the *Weſt Indies*, and the vaſt Impor-

(a) See *R. Vaughan* of Coinage. p. 105.

tation of Gold and Silver from thence. *Edward* the Third was the firſt of our Princes that took care to regulate (*a*) Wages by the Prices of Edibles and other Houſhold-Proviſions, and, ſince his Time, ſeveral (*b*) Statutes have been enacted about the ſame Subject. The Rents of Farms, by the yearly Improvements of the Lands, are ſo changeable and uncertain, that hardly any proper Judgment can be made of the value or Scarcity of Coin in the Nation by any Eſtimate taken thence: But Houſe-Rents will afford a more certain bottom for Calculation, eſpecially in ſuch Places where the Concourſe and Throng of the Inhabitants has continu'd almoſt the ſame for ſeveral Ages. Thus, for example, when we find a large Houſe within the very Precincts of the Court, in Channon-Row in *Weſtminſter*, letten to no leſs a Perſon than the Comptroller of the King's Houſhold for Thirty Shillings, we muſt conclude that (in King *Edward* the Sixth's time, when (*c*) this was

(*a*) St. 25. Ed. 3. (*b*) 12. & 13. Ric. 2. 13. Hen 4. 6. & 23. Hen. 6. 6. Hen. 8. 5. Eliz. &c. (*c*) J. S. Life of Sir *Tho. Smith*, p. 226.

done)

done) money was not ſo plentiful as 'tis now; and that one of his Shillings, when 'twas firſt coin'd, would have done a man far more Service than it will at this day.

The grand Advantage and Light that accrues to Hiſtory from the Epiſtolary Remarks of Men of Sence and Buſineſs, is ſo very obvious and apparent, that I ſhall need onely juſt to touch upon it. I will not trouble the Reader with more than one Inſtance of the uſefulneſs of ſuch Papers; and I can onely point to a ſmall handful of theſe, the greateſt part of the ſtore being ſtill in private hands. 'Tis the Collection of thoſe *Latine* Letters that were compos'd by *R. Aſcham*; and, chiefly upon the Account of their Elegancy, have had ſeveral (*a*) Editions. The Author was ſometime an Inſtructor in the *Latine* Tongue, and afterwards *Latine*-Secretary, to King *Edward* the Sixth, Queen (*b*) *Mary* and Queen *Elizabeth*; and, in this latter Station, was frequently employ'd to tranſlate ſeveral Letters of the then *Letters.*

(*a*) 8°. Lond. 1577, 78, &c. & 12°. Col. Allobr. 1611. (*b*) J. S. Life of Sir *Tho. Smith*, pag. 69.

Engliſh Miniſters of State to foreign Princes, Ambaſſadours and other great Men. In theſe we have all the fine variety of Language that's proper for the rendring of either a Petition or Complaint the moſt agreeable; and (withal) a deal of very choice Hiſtorical Matter that is hardly preſerv'd any where elſe. Together with the Author's own Letters, we have a good many that are directed to him, both from the moſt eminent Foreigners of his time (ſuch as *Sturmius*, *Sleidan*, &c.) and the beſt Scholars, as well as wiſeſt Stateſmen, of his own Countrey: And the (a) Publiſher of theſe aſſures us that he had the peruſal of a vaſt Number of others in the *Engliſh* Tongue, which were highly valuable. His attendance on Sir *Richard Moryſon*, in his *German* Embaſſy, gave him an intimate Acquaintance with the Affairs of that Countrey; and the extraordinary freedom and Familiarity, wherewith the two Sifter-Queens treated him here at home, afforded him a perfect knowledge of the moſt Secret Myſteries of State in

(a) *E. Grant.* in vit. Authoris.

this

this Kingdom: So that, were the reſt of his Papers to be retriev'd, we could not perhaps have a more pleaſing view of the main *Arcana* in thoſe Reigns than his writings would have given us. I know not whence a late (*a*) Writer was informed that he ſpent too much of his latter days in Diceing and Cock-fighting. *A. Nowel*, the learned Dean of *S. Paul*'s, who preach'd his Funeral-Sermon and was his Confeſſor during his laſt ſickneſs, affirms that he never knew any man live more honeſtly nor dy more Chriſtianly, and all that we have of his Compoſure ſhews him to have been a Maſter of ſuch Accompliſhments as are rarely attainable by any of ſuch looſe Diſpoſitions.

Out of Letters of Correſpondence, and private Journals, have been compoſed ſeveral Lives of eminent Stateſmen and Warriors, and many more might ſtill be had from the like Materials, wherein are always ſome ſcatter'd Paſſages of Note which either illuſtrate *Lives.*

(*a*) Ath. Oxon. vol. 1. p. 695.

or improve the more general Hiſtories of the Times. Of this kind are thoſe of (a) *Fulk Fitzwarren* and (b) *R. Fitzwalter*, two perſons of great Figure and Renown in the Reign of King *Henry* the Third. In after Ages, as the Remains of men of Buſineſs grew more conſiderable, their Lives were drawn at greater Length and in fuller Proportions. Sir *Thomas Moor*'s was written by a great many (c) hands; and Sir *Fulk Grevil* has given us the (d) ſtory of his intimate friend Sir *Philip Sidney*, but not ſo accuratly as we could wiſh, nor as the Memory of that extraordinary Perſon deſerves. Sir *Thomas Smith*'s is (e) lately publiſh'd by Mr. *John Strype*: who had formerly oblig'd us with ſome of the like Remains of Archbiſhop *Cranmer*.

(a) MS. Gall. apud *Cambd.* in Brit. N. E. p. 549. (b) See *Plot's* Staffordſh. p. 444. (c) Vid. *J. Pit's*, p. 764. & Ath. Oxon. vol. 1. p. 35, 36. & 115. *Fuller's* Worthies, in *Lincolnſh.* p. 208, 209. (d) 8° Lond. 1652. (e) 8°. Lond. 1698.

CHAP. VIII.

Of the Engliſh *Medals and Coins; from the Conqueſt to the end of Queen* Elizabeth's *Reign.*

SInce a Collection of Medals and Coins is eſteem'd (*a*) *not only an Ornament, but an uſeful and neceſſary Appendage to a Library*, this Hiſtorical one ought not to want a concluding Chapter on that Subject. And, I truſt, the Reader will pardon me, if here my Method be a little alter'd, and I am forced to treat of the matter it ſelf, inſtead of the Authors that have handled it. Few or none are our *Engliſh* Writers that have hitherto attempted a full Hiſtory of our Coins. Mr. *Speed* gave us the Cuts of ſeveral of 'em, curiouſly enough deſign'd, in his general Chronicle: But, as we ſhall have occaſion to

(*a*) *Evelyn*'s Numiſm. p. 1.

obſerve anon, he took them upon the Credit of Sir *R. Cotton*'s and *Mr. Selden*'s Conjectures; and therefore has not always appropriated them to their right owners. Sir *H. Spelman*'s Dialogue (newly (*a*) printed) reaches little farther than briefly to ſhew the variety in value of our antient Groats, &c. as alſo of all ſorts of Commodities, from thoſe of modern times: And (*b*) *Mr. Vaughan*'s Treatiſe of Money is only a Political Diſcourſe on the Advantages and Diſadvantages in Trade, by the Riſe and Fall of the current *Species*. Sir *John Davis*, in one of his Reports, gives the moſt ſatisfactory Account of the Mixture of Metals in the Royal Mints, and *John Stow*, in his Survey of the Tower of *London*, has pick'd up a deal of uſeful Remarks relating to the Hiſtory of Coinage. Others have lately conſider'd the ſame Affair with much skill and exactneſs: But their Speculations, being of an Univerſal Extent, and applicable to almoſt all Nations and Climates, are not to our Purpoſe. Onely *Mr. Lowndes*

(*a*) Reliq. *Spelm.* p. 203, &c. (*b*) 8°. Lond. 1675.

has

has written in ſo peculiar & inſtructive a manner, that our Hiſtorian may learn better, by his (*a*) little Book, how to diſtinguiſh and value the Coins of our ſeveral Kings, than from all the Volumes of our *Engliſh* Antiquaries. From the Eighteenth year of *Edward* the Third (downwards) he gives Abſtracts of ſuch Indentures of the reſpective Maſters of the Mint as are now to be had in the Exchequer, ſhewing what Peices of Gold and Silver were coin'd, and of what weight, Fineneſs or Allay. We might juſtly have expected whatever could have been deſir'd on this Subject from the excellently learned Pen of *Mr. Evelyn*; had he bent his thoughts, as was believ'd, towards the conſideration of our *Britiſh* Coins as well as Medals. It now appears that his (*b*) *Numiſmata* carry'd him no farther than thoſe larger and more choice Peices that are uſually call'd by this latter Name; whereon he has indeed treated with that accuracy and fineneſs which became a Gentle-

(*a*) Eſſay for the Amendment of the Silver Coins. 8°. Lond. 1695. (*b*) Fol. Lond. 1697.

man

man and a Scholar. Our common ordinary Coins are ſtill neglected and untouch'd; and therefore it's but a lame account that's to be look'd for in this firſt Eſſay. Some few *MS.* Tracts are to be had in the *Cottonian* Library, which ſeem to look this way; and the Founder's eminent knowledge in (*a*) theſe Matters, as well as all other Parts of good and Polite Learning, would put an Enquirer upon a better Stock of Hopes than will be anſwer'd on a ſearch into them. One of theſe has had the good fortune to be highly applauded by the learned Publiſher of the Catalogue, who beſtows this inviting Character upon it: *Si liber iſte ſuis Numeris abſolutus fuiſſet, pretii foret ineſtimabilis & vel ditiſſimis Theſauris æquandus. Utcunque erit in re Antiquariâ & Hiſtoricâ maximi uſûs.* It bears the Title of (*b*) *Livre de Monnoyes*; being wrtten in the *French* Tongue, and preſenting the Reader with pretty fair Draughts of a great many Coins of ſeveral Nations. But this Author, or Deſigner, furniſhes us

(*a*) Vid. *Cotton*i Poſthuma, pag. 185. (*b*) *Tiberius*. D. II. 1.

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onely with twenty-ſeven of thoſe which he calls *Engliſh*; tho' he reckons others among the *French*, which are truely of our Growth. None of theſe are of any great Age; the eldeſt being two Golden Peices of *Richard* the Second, and the reſt of a much later Date. The other Fragments are very inconſiderable, and hardly worth conſulting: being moſtly Abſtracts of our Laws and other Ordinances about Coinage, &c. eaſily to be had elſewhere. Such are thoſe, 1. (*a*) *De monetarum pondere*, &c. 2. (*b*) *De* Danelaye, *ſive Lege* Danorum *& Denariis beati Petri.* It gives the Statutes whereby this Tribute was enacted; tells how much was collected in each Dioceſe, brings a Teſtimony of King *Æthelwolph*'s making the Offering to the Pope, about the year 948. &c. 3. Of the (*c*) Orders about Money, &c. in the time of *Henry* the Eighth, by Sir *Tho. Greſham*. Moſt of this, which is not tranſcrib'd from the Statute-Book, relates to the diſpoſal of the many Extravagant Summs that were expended in that

(*a*) *Julius*, D. II, 15. (*b*) *Nero*, C. II, 11. (*c*) *Otho*, E. X. 3.

Reign.

Reign. 4 (a) Two Letters to *K. Edward* the Sixth, touching the Reformation of the Coin, ſhort and Political. 5. (b) *Capitula de tonſurâ Monetæ*, which are onely heads of ſome intended Diſcourſe. 6. (c) *De Compoſitione Monetæ tempore* R. Edwardi *filii Regis* Henrici, in *French*: Which, having repeated *Henry* the Third's Statute of *Aſſiſa Panis*, goes on with other Collections of a like Nature. In the ſame Volume there are two other ſmall Tracts inſcrib'd *Varia genera & valores auri & argenti*, and *Aſſaium auri factum apud* Weſtminſter A°. 23. R. Edw. 3. where you have a regular Scheme of what his Majeſty and the Mint-Maſter are to gain by the Coinage of ſuch and ſuch Quantities of Gold, theſe being the two general Titles of the Calculation, *Pondus Auri* and *Pars Regis & Magiſtri*. There is alſo a fair *French MS.* in the well furniſh'd Library of the preſent worthy Biſhop of *Norwich*, written by *Nic. Tyery*, one of *Henry* the Eighth's Mint-Maſters. The Deſign of the Book is to ſuggeſt ſome Reaſons

(a) *Veſpas*, D. XVIII, 4. (b) *Cleop.* C. VII, 6. (c) *Cleop.* A. XVI. 3, 6, 7.

for the new coining of the money of this Kingdom, and raiſing its value: To which end he gives his Majeſty an Account of the Weight, Metal, Form, &c. of all the then current Money in *Europe*; with Draughts of every Piece, in Black and White. The Heads and Reverſes ſeem to be exactly taken: But the Legends are very faulty, and not to be rely'd on. The Author is moſt particular about the *Iriſh* Money; becauſe (as appears from his Preface) he was concern'd in the Reformation that was made, by this King, in the Mint at *Dublin*.

Before the Reign of King Charles the Firſt, we have very few Pieces, (as *Mr. Evelyn* obſerves) that can pretend to the Name of Medal. The moſt of thoſe few, he has given us; and I ſhall not repeat them, but remit the Reader to his Book. One or two there are, within my Limits, which ſeem not to have fallen in the way of that moſt curious Gentleman. If *Edward* the Third's Roſe-Noble (or *Golden Royal*, as he calls it) be indeed to be reckon'd amongſt our Medals, yet it muſt not pretend to be *Medals.*

the

the first of that Name; if all be true which a modern (a) Author has recorded about the Coronation-Pieces of that great King. He is extremely Particular in his Description of these: Telling us that *on the Pile was the young Prince crown'd, laying a Scepter on a Heap of Hearts, with this Motto* POPULO DAT JURA VOLENTI. *On the Reverse a hand held forth, as it were saving a Crown falling from on high, with these words* NON RAPIT SED RECIPIT. I do not doubt but his Friend at *Greys-Inn* had such a Medal: But he must give me leave to suspect that they were very widely mistaken that first ascrib'd it to this Prince. For (to omit other Reasons) there's nothing in the Legend that look's that way; and the inscrib'd fancies are too brisk for those Times, savouring of a much more Polite Age. One of Queen *Elizabeth's* is omitted, whereon we have the Queen's Head crown'd, with the Legend *QUID NOS SINE TE*; and on the Reverse, a Castle mounted on a Globe inscrib'd, *QUID HOC SINE*

(a) See J. *Barnes's* Hist. of *Ed.* 3. pag. 4.

ARMIS,

ARMIS. Another of the ſame Queen is alſo wanting, which bears four Figures (a Man, Woman, and two Children) in a Praying Poſture, and ſubſcrib'd 1588. The Legend being *HOMO PROPONIT, DEUS DISPONIT.* On the Reverſe is a great Ship toſs'd on the Waves, and *HISPANI FUGIUNT ET PEREUNT NEMINE SEQUENTE.* Theſe are all that (as far as I know) were ſtruck before the union of the Kingdoms in King *James* the Firſt, which have eſcaped the notice of this worthy Perſon. I ſhall only beg leave to add this ſingle Remark, that perhaps the Reverſe of his firſt Medalion of *Henry* the Eighth is rather to be reckon'd a Family-Badge than regardant of any particular Action of that King: Since his Father has the Portcluſe, with the ſame Motto, on his Tomb at *Weſtminſter*; which there ſeems to refer to his other Titles to the Crown being ſtrengthen'd by his Mother's being a *Beaufort*, of which Family the Portcluſe was the Badge. And, what if this very Medalion be indeed one of *Henry* the Seventh's; and unduely (by ſome Errour of the Engraver or Copyer) be-

beſtow'd on his Son? The Figure of the Face would tempt a man to ſuſpect ſome ſuch matter.

William. I. At the Conqueſt, the little coin'd Silver they had bore the ſame Countenance with what had paſs'd in the days of our *Saxon* Kings: For the Conqueror's Penny (in *Speed*) is of the ſame Size with theirs, giving his Head full-faced a Croſs in the right hand and a Scepter in the left, inſcrib'd *WILLEM. REX. ANGLO*: On the Reverſe a Croſs *Fleuree*, with four Scepters quarterly, the Inſcription *IESTHN. ON. HEREFOR+*. Some (*a*) others, that are juſtly believ'd to be his, have two Scepters on the Crown-ſide; and ſome have none. *Stow* ſays the Conquerour (as he appear'd on his Coins) wanted a Beard; and he quotes *William* of *Malmesbury* to prove that the *Normans* never wore any. As alſo mentions ſome Peices of his that had *Le Rey Wilam* inſcrib'd on them; tho all thoſe that we now attribute to him have either the Simple Style of *Rex*,

(*a*) Penes RR. D. *Joh.* Archiep. *Ebor.*

or

or with the Addition of *An* or *Anglo*. I ſuppoſe the Coinage of their Money, in this Faſhion, was one of thoſe Improvements which the *Norman* Court had from our *Edward* the Confeſſor; who, by their own Writers, is allow'd to have taught them a great many of our *Engliſh* Cuſtomes. That all great Summs were yet paid by (*a*) Weight and Touch is generally agreed; and thus the Monks (*b*) of *Ely* paid the King their ſeven hundred Marks, and *Edgar* (*c*) *Etheling*'s Allowance was a pound of Silver (by weight) dayly. Yet Purveyances were, even in this King's Reign, (*d*) changed into money; and the Sheriff collected them in the following Proportions. Inſtead of,

Bread for a hundred men, one Shilling;
One Paſture-fed-Ox, one Shilling;
A Ram or a Sheep, fourpence;
Provender for twenty Horſes, four pence,

(*a*) Vid. Reliq. *Spelm.* p. 203. (*b*) *Speed* ad An. 1073. (*c*) Id. ad An. 1074. (*d*) *Gerv. Tilbur.* in Dialogue de uſu Scacc.

But, when these little Contributions were thus gather'd, the Collectors still paid their gross Summs into the Exchequer by Weight: *Solutionis autem modus* (says (*a*) *Mr. Selden*) *Ponderis & Metalli operâ Chymicâ examen, Fusor & Miles Argentarius, fusiùs apud metipsum enarrantur.* Where he has done this I could never yet learn: For, in his Treatise (*b*) *de Nummis*, there's no mention of any such matter. But *Mr. Lowndes* gives the Discourse at large, out of the *Black Book* in the Exchequer, *De Officio Militis Argentarii & Fusoris.*

William.II. *W. Rufus*'s Penny is of the same bigness with his Father's, bearing his own Image, full-faced and inscrib'd *WILLEM. REX.* (some have *WILLEM. II. REX.*) and on the Reverse, *CODRIOONO+ƆWI+.* which perhaps should be read *GODRIC. ON. NORTH-WIC.* Both this King and his Father appear, on their Coins, in a pearl'd Diademe, with Labels at each ear, and a sort of an Arch cross the Head; such

(*a*) Jan. Angl. lib. 2. p. 75. (*b*) Ad. finem *Ph. Labbei*, Bibl. Bibliothecc. 8°. Rothom. 1679.

as

as is frequent on theſe of the Eaſtern (a) Emperours.

Henry the Firſt's is of the ſame Shape and Size with the former, inſcrib'd *HENRIC. REX.* and *LEEPARD. ON. SV+.* So *Speed* has given it: But (b) ſometimes he bears a Crown of three flowers *de Lis*, without any Rays intermix'd, and without any Pearls at his Ears. *Roger de* (c) *Hoveden* gives this Notable Account of the State of the Mint in his time: *Monetam corruptam & falſam ſub tanta animadverſione corrigi Statuit, ut quicunque falſos denarios facere deprehenſus fuiſſet, oculos & inferiores corporis partes, ſine ulla redemptione, amitteret, &, quoniam ſæpiſſimè dum denarii eligebantur, flectebantur, rumpebantur, reſpuebantur, ſtatuit ut nullus denarius vel obolus, quos & rotundos eſſe juſſit, aut etiam quadrans, ſi integer eſſet, reſpueretur. Ex quo facto magnum bonum toti regno proviſum eſt*, &c. Some of theſe ſmall Peices are ſtill to be ſeen in ſeveral of the *Muſæa* of our learned men, *Henry. I*

(a) *Selden's* Tit. of Hon. p. 134. (b) Penes RR. Archiep. *Ebor.* (c) Edit. *Francof.* p. 471. Vide & LL. Hen. 1. cap. 1.

with the King's head Crown'd (as on his Penny) with a pearl'd Diadem; but without any manner of Inſcription. There's another memorable Paſſage, in one of his own Ordinances, relating to this Subject: (*a*) *Monetagium Commune quod capiebatur per Civitates vel Comitatus, quod non fuit tempore* Edwardi *Regis, hoc ne à modo fiat omnino defendo.* *R. Weſtcot* (or rather (*b*) *Ad. Littleton*) tranſlates *Monetagium Commune* by theſe words, the *Common Duty of Money or Coinage*; And, in his Notes, gueſſes that the Countrey-Mints paid ſome ſuch *Duty* to the King's Chief Mint. He proves, from Domeſday-Book, that *Wincheſter* paid twenty Shillings for each Minter; *Pro Cuneis Monetæ accipiendis*, that is, for their Dies or Stamps. Some of theſe do not ſeem to have made that honeſt uſe of the Priviledges ſo granted them, as they ought to have done; ſince it appears the Land was ſo oppreſs'd with falſe counterfeit Money that the King was forced to put his forementiond Law in Execution: (*c*)

(*a*) Vid. Cart. Hen. 1. citat. (è *Matt. Paris.*) à *Joh. Seld.* Jan. Angl. lib. 2. p. 80. (*b*) Ath. Oxon. vol. 2. p. 280. (*c*) *M. Paris*, ad An.. 1125.

Om-

Omnes Angliæ *Monetarios, eò quòd Monetam furtivè corruperant, fecit turpiter ementulari, & manus dextras præcidi.* We ſhall have occaſion to ſay ſomething more of this matter hereafter. At preſent, let it onely be obſerv'd that many of our chief Antiquaries (and ſuch as have been curious in their Enquiries about our antient Coins) have complain'd that 'tis extremely difficult, if not utterly impoſſible, to diſtinguiſh thoſe of our elder Kings of the ſame Name; eſpecially our *Henries* and *Edwards.* Indeed *Henry* the Firſt and Second are, in their Coins, crown'd alike; with *Fleuree* (*a*) *de Lis*, and two Labels of Pearl (or ſome ſuch thing) at each ear: But ſeveral of the reſt differ conſiderably in this particular, as will be noted of each in their Order. And, where no aſſiſtance can be had from the variety of their Crowns, we may be pretty well enabled to Tribe them right by the change of their Style and Title; whereof enough has been already ſaid, upon the Subject of their Charters. Where this expedient likewiſe

(*a*) See *Selden's* Tit. of Hon. P. 1. cap. 8. p. 134.

fails us, we are Scrupulously to examine the different Allays of the Metal it self: And (lastly) the difference of the Size is sometimes carefully to be heeded. For example, amongst the three first *Henries* we meet with nothing but thin Pieces of about the Weight, Breadth, and Intrinsick value, of a Queen *Elizabeth*'s Threepence; which was their Penny, and from which we still retain the Name of our *Penny-weight*. In succeeding Reigns larger Peices, of four times the bulk and weight of these, were minted; they, from such increase of their Size beyond that of former times, were call'd *Groats*, and weigh'd as much as our present Shillings.

Stephen. In King *Stephen*'s time there seems to have been a deal of Money coin'd: For thus write some of our Historians, (*a*) *Erant in* Anglia *quodammodo tot Reges, vel potiùs Tyranni, quot Domini Castellorum, habentes singuli percussuram Proprii Numismatis, & potestatem Subditis Regio more dicendi Jus.* And yet

(*a*) *G. Neubrigens.* apud. *J. Seld.* Jan. Angl. lib. 2. pag. 88.

we

we have very few Remains of their Treasure. His Penny, in *Speed*, is no bigger than those of his Predecessors. 'Tis the first, after the Conquest, that's half-faced; with this Inscription, *STIEFN. E'.* and, on the Reverse, *+SPTIDETS DN ▿ V.* which may possibly be the blunder'd Name of some of his formention'd Royal Lords. Different from this is (*a*) that which gives us both his Eyes; tho', even here, the Face is somewhat Side-wayes. The Crown is much the same with that of *Henry* the First; onely the Flowers are rais'd higher. *Mr. Tanner* lately met with another; which, instead of the King's Head, bore two Angels with *STIEFEN RE.* and had a Reverse like that of *William* the Conquerour. Amongst the foreign Coins, that were current in *England* at this time, the most remarkable were the Silver and Gold *Besantines*, so call'd from *Bizantium* or *Constantinople*, where they were coin'd; whereof the former was worth about two (*b*) Shillings *English*, and the other about the (*c*) weight of

(*a*) Penes RR. D. Archiep. *Ebor.* (*b*) See *Kennet's* Paroch. Antiq. pag. 109. (*b*) Id. in Gloss. voce *Besant.*

a Ducate. A Manuſcript in (a) Sir *John Cotton*'s Library ſets it at a Florene and a half.

Henry. II. 'Tis a ſtrong Diſpute amongſt our Antiquaries, whether the Name of *Sterling*-Money be any elder than the Reign of *Henry* the Second. Nay, ſome will needs bring it as low as that of his Son (b) *Richard* the Firſt. *Mr. Kennet* (c) obſerves the uſe of the word *Sterilenſis*, for the later *Sterlingi*, to be as early as the dayes of *Ordericus Vitalis*, who particularly uſes it in his Hiſtory of the Tranſactions of the year 1082. from whence he concludes (according to *Mr. Somner*'s Opinion) that the word ſhould be deriv'd from the *Saxon* ſtreop *Regula*, and ſtreopan (to Steer) *Regulare*; becauſe this Money was of that juſt Temper and Fineneſs which was the proper *Standard* of the Mint. But Sir *Hen. Spelman* thinks otherwiſe; and ſo does the Author of a *MS.* (d) Fragment on

(a) *Nero*, C. II. 11. (b) *Chamberl.* Not. Angl. Edit. 16. Par. 1. p. 10. (c) Gloſs. ad. Antiq. Paroch. Vid. & *G. Somner*, Gloſs. ad. X Scripp. (d) Bibl. Cott. *Fauſtina*, E. V. 10.

this

this Enquiry. They (and others) affirm that it must be deriv'd either from *Esterling*, a standard us'd by the Merchants tradeing hither from the Eastern Parts; or from those *Easterlings* themselves, who were the first workmen of it. For my own part, I cannot prevail with my self (notwithstanding the powerful Authority of Sir *Henry Spelman*) to believe such a Story; and am strongly inclin'd to fancy that this Conjecture (from the Jingle of the two words) has been too rashly vented by some, and as carelessly embrac'd by others. 'Tis certain the *Prussians* and other next neighbouring Nations to the *Baltic* Sea, who are the *Easterlings* aim'd at by these Writers, had no Silver-Money among them, till 'twas brought into that Countrey, by the Knights of the *Teutonic* (*a*) Order, about the middle of the Thirteenth Century: And King *Wenceslaus*, about fifty years after that, gave a Currency to (*die Böhmische Groschen*) the (*b*) *Bohemian* Groats, which was the first Sil-

(*a*) *Chr. Hartnoch.* Dissert. de Reb. Prus. p. 282. (*b*) Vid. *Alex. Guagnini* Hist. Sarmat. Edit. *Spir.* fol. 16. a.

ver

ver Coin that was known in the Kingdom of *Poland*. How then is it poſſible to imagine that we had our firſt Refiners of Silver from a Countrey that either was wholly unacquainted with the Metal, or (at leaſt) did not, at that time, uſe it in Commerce? Nor was there any ſuch Purity in the beſt foreign Money as in that which we now coin'd at home; and therefore this King had alſo, amongſt other Officers of the Exchequer, his *Miles Argentarius* or Aſſay-Maſter, whoſe buſineſs it was (*a*) *examinare pecunias Regi Solutas, propterea quòd in multis locis & diverſè admodùm cudebatur. Sterlingus*, in all the Records of this Age, is the very ſame thing with *Denarius*, and both words are indifferently uſed to ſignify that ſmall Piece of Silver-Money which our Kings then coin'd, with little Anulets or *Stars* in every Quarter of their Reverſe. This King's is no larger than thoſe already mention'd; giving him full-faced, with a Scepter in his right hand, and this Inſcription *HENRICVS. REX.* on the Reverſe - - - *O-*

(*a*) D. *H. Spelm.* Gloſs. in voce *Arſura.*

RIM.

RIM. - - ON. S - - Inſtead of his Crown in *Speed*, (*a*) ſeveral of his Coins have only a Row of Points (commonly five in Number) with a Croſs rais'd upon the middlemoſt of 'em; and, on the Reverſe, a doubled-lined Croſs, with four *Globuli* or Bullets in each Quarter. *Mr. Thoresby* of *Leedes* has three ſeveral ſorts of Pennies, which he ſuppoſes to have been coin'd at *York* in this Reign; one of 'em bearing *NICOLE ON EVE*; another *REN-AVD ON EV.* and the Third *TOMAS ON EVR.*

An Eminent (*b*) Antiquary obſerves that he had two Prodigal Sons, *Henry* and *John*, Kings at the ſame time with himſelf; and that 'twas a vaſt Treaſure which they waſted in their coſtly Expeditions into *France*, *Flanders*, *Sicily*, &c. His Son *Henry* (who dy'd before him) was indeed (*c*) Crown'd in his Life-time; and brought a Charge on the Nation, by graſping at a greater Share of Soveraignty than was deſign'd him: But *John* was not ſo much as a Vice-Roy till the Throne

(*a*) Penes RR. Archiep. *Ebor.* (*b*) Vid. Reliq. *Spelm.* p. 206. (*c*) M. *Paris*, ad. An. 1170.

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was in the Poſſeſſion of his brother *Richard*, who made him *Dominus Hyberniæ* but no *Rex*. Whether *Henricus Junior* (as our Hiſtorians call him, in diſtinction from his Father) coin'd any Money, I know not: But 'tis certain he had a great (*a*) Seal.

Richard. I. *Richard* the Firſt is repreſented as a Corrupter, rather than a Refiner, of our *Engliſh* Coin: And truely his Parade in the Holy Land, with his Ranſom upon his Return, was ſo very chargeable that 'tis no wonder to find him put to all imaginable Shifts for the multiplying of his Money at home. His Penny, in *Speed*, looks a little oddly; having two faces inſcrib'd *RICVS. R : : : S. REX.* and, on the Reverſe, *A : V : : ON. N : : NICO.* His money is rare.

John. King *John* gives his Face full, in a Triangle, with a Scepter in his right hand, inſcrib'd *JOHANNES. REX.* on the Reverſe, another Triangle, with a half Moon and a Star, and this Inſcrip-

(*a*) Tit. of Hon. p. 134. & *J. Speed*, in *Hen.* 2. §. 79.

tion:

tion: *ROBERD. ON. DIVE.* Which laſt words, I preſume, ſhew that the money was coin'd at *Dublin* or *Divelin*; he being the firſt (as has been already hinted) that had the Title of *Dominus Hyberniæ*, and that in his Brother's Life-time. Some Pennies of the following Kings have alſo the Head in a Triangle; and 'tis obſervable that all ſuch are *Iriſh* Coins.

Henry the Third's is inſcrib'd *HENRICVS. REX.* III. and, on the Reverſe, *ROBERT. OICANT.* i. *Rob. on Cant.* or *Canterbury*; tho' I can hardly think 'tis any way related to *Robert Kilwardby*, who came only to the Archiepiſcopal See in the very laſt year of that King's Reign. The Crown here differs much from that on his great Seal; which (as 'tis drawn by *Speed*, and deſcribed by (*a*) *Selden*) gives it *Fleuree*, pointed or rayed, the Points or Rays being rais'd, but not high, between the Flowers: Whereas here there ſeems to be ſomewhat of a Tuft or Button in the middle of the *Henry.* III.

(*a*) Tit. of Hon. pag. 134.

Crown.

Crown. In all the Coins that belong to this King there's always his Number (III.) added to his Title; which is enough to diſtinguiſh them from thoſe of other Kings of the ſame Name. About the Thirtieth year of his Reign the Clippers had made that havock with the money, that there was hardly a Penny to be ſeen, which had not loſt the Letters on both ſides: So that the King was oblig'd to iſſue out a Proclamation, requiring all Traders to receive and pay by Weight. Strict Enquiry was alſo made after thoſe Traytorous Perſons themſelves who had been the Authors of this miſcheif; and they were found to be cheifly the (a) *Caurſini*, a Knot of *Italian* Bankers, who (under pretence of coming hither to traffick by the Pope's Encouragement) carry'd on their villanous Practices of impoveriſhing the Kingdom by Uſury and other oppreſſive Exactions. There were alſo a great many *Jews* and *Flemiſh* Merchants engaged in the Confederacy; and ſuch of 'em as could be apprehended were immediately executed (as

(a) Vid. *M. Paris.* ad ann. 1248.

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they were likewiſe in *France*) according to their demerits.

Edward the Firſt finiſh'd many of his Father's well deſign'd Projects; and among theſe, is ſuppos'd to have been the firſt of our Kings that perfectly fix'd the (*a*) Standard of our Coin. This he very quickly effected. In the Third year of his Reign, as we are told out of an old (*b*) Lieger-Book of the Abbey of St. *Edmundsbury*, the matter was thus order'd by *Gregory Rockley*, then Mayor of *London* and Mint-Maſter: That, in a pound of Money there ſhould be eleven Ounces two pence farthing pure Leaf-Silver, and only Seventeen pence half-penny farthing Allay; and this pound was to weigh twenty Shillings and three pence in account, each Ounce twenty pence, and every Penny twenty four grains and a half. But the Size of his Coin was not ſo preſently alter'd, if ever it was ſo in his Reign: For, at the making of the Statute of (*c*) *Articuli ſuper Chartas*, the Penny *Edward I.*

(*a*) *Evelyn's* Numiſm. p. 233. *Lowndes*, p. 94.
(*b*) *Camd.* Remains, Chap. of *Money*, (*c*) 28. Ed. I.

is

is (*a*) ſuppos'd to have been the only current Money of *England*. At the ſame time there were diverſe kinds of foreign (*b*) and Counterfeit Money (as *Pollards*, *Crocards*, *Staldings*, *Eagles*, *Leonines*, and *Steepings*) cry'd down by Proclamation; becauſe, ſays the Record, two peices of 'em were only of the value of one *Sterling*, their Compoſition being an Artificial mixture of Silver, Copper and Sulphur. Others (*c*) obſerve that the *French* Crocards, Pollards, &c. were firſt forbidden in the Seventh year of this King; and that this Prohibition was not repeated in his twenty-Eighth, but (inſtead of that) *Roſaries*, *Steepings* and *Staldings*, were only decry'd utterly; and *Crocards* and *Pollards* order'd to paſs at half. Afterwards, he is (*d*) reported (but, I think, falſly) to have order'd the minting of *Groats*, which were ſo called, becauſe they were the *Greateſt*, or largeſt, Money then uſed. So the *Germans* had already named

(*a*) *Coke*'s Inſtit. par. 2. p. 575. (*b*) Id. ibid. p. 577. (*c*) *Cambden*'s Remains. (*d*) ſee *J. Stow*'s Survey of *Lond.* Chap. *Tower*; and *Chamberlain*'s Not. Angl. Edit. 16. p. 11, 12.

their

their *Groſche*, which, tho' *Schottelius* makes it a Primitive, is a Word of the like ſignification, and undoubtedly the Parent of our Groat. Theſe were of the weight and value of four Pennies. *J. Speed* pretends to give us a Cut of one of 'em, inſcrib'd *EDWARDVS. DI. GRA. ANGL.* on the Reverſe, in a larger Circle, *DNS. HIBNE. DVX. AQVIT.* and, in a leſſer, *CIVITAS. LONDON.* I fancy he is miſtaken. None of thoſe Pieces of Silver which we find on the Borders of *Scotland* (where this King parted with a great ſhare of his Treaſure, and afterwards his Life) carry this Inſcription; and therefore I ſometimes thought that this was Coin'd by his Grandſon, before he took upon him the Title of *France*. I have now Learn'd that the figure of the *N* (as will be obſerv'd hereafter) determines it rather to *Edward* the Fourth: But, the truth is, 'tis ſo very ſingular (and ſo different from any that I have, or have ſeen) that I know not well what to ſay to it. 'Tis alſo reported, out of the (*a*) *Red-*

(*a*) *Lowndes's* Eſſay, p. 94, 95.

Book in the Exchequer, that this King's Foreign Mint-Masters (from *Marseilles* and *Florence*) had Thirty Furnaces at *London*, Eight at *Canterbury*, besides three which the Arch-Bishop had there, Twelve at *Bristol*, and Twelve at *York*; and that they Coin'd Gold as well as Silver: But, the main of that Book having been written before this Reign commenc'd, the Authority of a Quotation out of its additional Fragments (of a later Date) is not of any great weight.

Edward II. We cannot assuredly affirm that *Edward* the Second did ever coin any Money, he and his Favourites minding more the methods of exhausting, than increasing, the Treasure of the Kingdom. Some Pennies indeed there are which usually go by the Name of this King: Bearing *EDW. R. ANGL. DMS. HYB.* (as in *Speed*) and, on the Reverse, the Names of several Cities in *England* and *Ireland*; as *CIVITAS. LONDON. LINCOL. DUBLIN. WATERFORD*, &c. But, whether All or any of these are justly ascrib'd to him, I cannot tell; neither our Histories nor Laws affording us any Light in this matter.

matter. My (*a*) beſt Guide has obſerv'd that *Edward* the Firſt ſet up four Mints at *Dublin*, and Coin'd a great deal of Money in that Kingdom; and that the Old *Edward*-Pennies, that are *Iriſh*, have only the three firſt Letters of the Name. He likewiſe takes notice that moſt of the *Engliſh* have the like: And therefore (conſidering that this King Coin'd far more Money than his Son) he thinks it reaſonable to conclude, that all ſuch Pennies as have *EDW.* belong to the Firſt of that Name; whereas thoſe with *EDWA.* (*EDWAR.* or *EDWARD.*) are the Second's, and thoſe with *EDWARDUS* (at length) were Coin'd either by the Third or Fourth.

Edward the Third (the greateſt Prince in *Europe*, of his time, and the Glory of our *Engliſh* Throne) improv'd the Regulation of Coin, begun by his Grand-father; providing (*b*) largely againſt the Importation of falſe or *black* Money, and Counterfeit Sterling. This, the Preface to the Law tells us, *Edward* III.

(*a*) RR. D. Archiep. *Ebor.* in Notis MSS. (*b*) Statute of *York*, 9. *Ed.* 3.

was then commonly Practis'd by Foreigners: And 'twas a miſchief ſo difficult to redreſs, that another (*a*) Statute awards an *Exigent* againſt thoſe that bring in ſuch Money *in deceit of the People.* In the Thirteenth Year of his Reign he took upon him the Title of *France*, and, after that, we have his Groats very plentifully, bearing his Head full-faced, Crown'd and Inſcrib'd *Edward. D. Gra. Rex. Angl. & Franc. D. Hyb.* On the Reverſe, in a large Circle, *Poſui Deum Adjutorem Meum* (a Motto continued by all his Succeſſors, down to the Uniting of the Kingdoms) and, in a leſſer, *Civitas London.* Some have *Civitas Eboraci.* Theſe are they which Biſhop (*b*) *Tunſtal* (too haſtily) obſerv'd to be Equivalent, in weight and fineneſs, to the Old Roman *Denarius*; as his half-Groat was ſaid to be to their *Quinarius*, and his Penny to their *Seſtertius*: And ſuch Numbers of 'em are ſtill dayly diſcover'd, eſpecially on the Confines of the two Kingdoms, as ſufficiently ſhews the miſtake of that Obſervation that (*c*)

(*a*) St. 18. *Ed.* 3. (*b*) In Addit. ad Lib. *de Arte Supputandi.* (*c*) Reliq. *Spelm.* p. 207.

His

His Victories and Deſigns, in France *and elſewhere, exhauſted ſo much Treaſure, that little or none almoſt remain'd in the Land.* In his Seventeenth Year, by a (*a*) Statute never Printed, Proviſion is made againſt the Exportation of Sterling-Money, and Allowance given for the Currency of ſuch *Flemiſh* Coins (*groſſes ou autres*) as ſhall be of the like Allay; and the Year following, as if all the Charter-Mints in the Kingdom were too few to Anſwer the Public occaſions, 'tis (*b*) ordain'd that Money ſhall be made wherever the King pleaſes. It may not perhaps be ungrateful to the Reader to preſent him with the Form of a Writ upon one of his Grants for the Coinage of Money, made before the enacting of that Statute. It runs thus: (*c*) *Rex dilecto ſibi* Johanni *de* Flete *Cuſtodi Cambii noſtri* London. *Salutem. Cum per Cartam noſtram conceſſerimus dilectis nobis in Chriſto---Abbati & Monachis de* Radyng *quòd ipſi & ſucceſſores in perpetuum habeant*

(*a*) *Coke's* Inſtit. Par. 2. cap. 31. p. 93. (*b*) St. 18. *Ed.* 3. cap. 6. (*c*) In Regiſt. MS. Monaſt. de *Reading*, penes virum doctiſs. nobiſq; amicum. *T. Tanner.*

unum Monetarium & unum Cuneum apud dictum locum de Radyng *ad Monetam ibidem*, viz. *tam ad obolos & ferlingos, quàm ad Sterlingos, prout moris eſt, fabricandam & faciendam, prout in Cartâ noſtrâ prædictâ plenius continetur: Vobis mandamus quod tres Cuneos de auro & competenti Metallo, unum*, viz. *pro Sterlingis, alium pro obolis, & tertium pro ferlingis, pro Monetâ apud dictum locum de* Radyng *faciendâ, de Impreſſione & circumſcripturâ quas dictus--- Abbas vobis declarabit, ſumptibus ipſius Abbatis, fieri & fabricari faciatis indilatè, & eos ad Scaccarium Noſtrum apud* Weſtm. *quamprimum poteritis mittatis, ita quòd ſint ibidem a die* S. Martini *prox. futuro in* xv. *dies, ad ultimum, præfato Abbati ex cauſâ prædictâ liberand.* T. J. *de* Shardiche *apud* Weſtm. xvii. *die* Nov. *Anno Regni noſtri* xii°. Whence it ſhould ſeem that either the Abbots and other great Men were only permitted to Coin ſmaller Pieces, uſeful in common Exchange, in like manner as our Kings to this Day are wont to give Patents for the making of Copper half-pence and farthings, whereas the Soveraign ſtill reſerv'd the ſole Power of Minting the larger Money to himſelf, in his own

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immediate Officers: Or elſe, that (in truth) there was not any greater Piece Coin'd here, till after the twelfth Year of this King, than a Penny. But, to return. By another of his Laws 'tis made High Treaſon, (a) *Si home apport en ceſt Roialme——la money appell'* Luſhburg: Which is (b) explain'd to be meant of baſe Money Coin'd at *Luxemburg*, but reſembling the true *Engliſh* Sterling. In the ſame Year, the (c) Statute of Purveyors takes notice of the Golden Coin of this Kingdom, and provides that it ſhall not be impair'd in Weight nor Allay. 'Tis moſt certain that, even in the *Saxon* times, this Metal was ſometime given in diſcharge of groſs Summs; As, not to mention other Authorities, is ſufficiently evident from that Paſſage in the Old Book of *Abingdon*: (d) Ulfricus Spot, *Miniſter* Ethelredi *Regis* (A. D. 1004.) *Dedit dicto Regi, pro Confirmatione Donationis & Conſtructionis Abbatiæ de* Burton, ccc. *Mancas Auri, & unicuiq; Epiſcopo V Mancas*:

(a) St. 25. *Ed.* 3. cap. 3. (b) *Coke's* Inſtit. Par. 2. pag. 1. See alſo *Chaucer's* Pref. to his *Monk's Tale*. (c) 25. *Ed.* 3. cap. 13. (d) Apud *J. Sell.* Jan. Angl. lib. 2. p. 91, 92.

But we could never learn that this was paid any otherwise than by Weight and in Bullion. The Author of the *Mirror des Justices*, giving an (*a*) Account of several Constitutions made by some of our Antient Kings (before *Edward* the First) says that they ordain'd, *Que nul Roy de cest Realm ne poet changer la money, ne impairer, ne amender, ne auter money faire, que de ore ou d'argent sans l'assent de touts les Counties*: Which words manifestly imply that, in those Days of Yore, our Forefathers had Coin'd Moneys in Gold as well as Silver. But let the Reader observe that, in the *English* Edition, 'tis said that *no King*, &c. *Shall make any other Money but of Silver*; and indeed the Words *de ore ou* seem to be a Marginal Note, of some Novice in our History, and (tho' Sir *Edward Coke*, (*b*) finds no fault in them) very unfairly crept into the Text. Wherefore, for any thing that has yet appear'd to the contrary, *Edward* the Third is justly reckon'd the first of our Monarchs, that Coin'd Gold: And this he caus'd to be done in so Beautiful a

(*a*) Cap. 1. §. 3. (*b*) Instit. Par. 2. p. 576.

manner

manner that his Roſe-Noble has merited the Eſteem of a Medal. Mr. *Evelyn* (*a*) has amply deſcrib'd this, and given a full Account of the Inſcription (*Jeſus autem tranſiens*, &c.) on the Reverſe: But (with ſubmiſſion) 'tis *Edward* the Fourth's that he gives inſtead of *Edward* the Third's, whoſe Pieces never ſtinted the *French* Flowers *de Lis*, to the preciſe Number of three (for that was not done before *Henry* the Fifth's Reign) nor had they a Sun, but a Croſs only, on the Reverſe. About the ſame (*b*) time that theſe were firſt Coin'd, there were alſo Coin'd Pieces of Six Shillings of the ſame fine Gold, which had the Name of *Florences*, from the *Florentines*, (*c*) who (in the year 1252) had firſt minted ſuch Peices. So that *Florenus* was then a Name which was generally uſed, all *Europe* over, for the chief Golden Coin, as 'tis now for the beſt in Silver. Our *Engliſh* Florens did not differ much from ſome of the ſame King's Roſe-Nobles in Weight (there being fifty of the for-

(*a*) Numiſm. p. 85, 86. (*b*) *Cambden*'s Remains, Ch. of of Money. St. 18. Ed. 3. Mr. *Lowndes*'s Eſſay, p. 35. (*c*) *Evelyn*'s Numiſm. p. 4. Gloſſ. D. *Du Freſne*, in voce *Florenus*.

mer,

men, and forty-five of the latter, Coin'd out of a Pound of Gold) and whether they differ'd at all in the Impreſſion and Legend I cannot tell: But I am ſure that the Golden *Florene* was alſo, at this time, as current and common beyond the Seas as here, and indeed a Foreign Coin. Amongſt other Articles agreed on (in the Year 1366.) between *Peter* the Firſt, King of *Caſtile*, and our Valiant Prince *Edward*, it was provided that the *Engliſh* Army ſhould be paid by the ſaid King; and that, to this purpoſe, he ſhould advance five hundred and fifty thouſand *Florens*. The Words are (*a*) *Cugni de Florentiâ boni auri & legitimi ponderis*: And we may as well affirm that the *French* Muttons (*Multones* (*b*) *auri*) which were alſo current here at the ſame time, were of *Edward* the Third's own coining, as that King *Peter*'s Florens were ſo. The *Roſe-Noble* had the former part of its Denomination from the Roſe encircling the King's Arms, &c. and the latter from the purity and excellence of its Metal; and 'twas from

(*a*) Tit. of Hon. p. 219. (*b*) Gloſs. *H. Spelm.* & *W. Kennet*, in voc. *Multo.*

this

this famous Coin that every imaginary half-mark was afterwards call'd a *Noble*, the moſt early uſe of the word in that ſenſe being in the (*a*) *French* King's Parole of Ranſom in the thirty-fourth year of this Reign.

Richard the ſecond's Roſe-Nobles (if that in *Speed* may be call'd by that Name, for it wants both the Roſe and the conſtant Legend of *Jeſus autem*, &c.) gives his Pourtraicture in a Sedentary Poſture, with a Sword in his right hand, and *Ricard. d. gra. Anglie. Francie. Rex. D. Aquit.* On the Reverſe, *Auxilium meum a Domino.* His Crown here is *Fleuree*, as on the Coins of his Predeceſſors, but has no Rays betwixt the Flowers. We ought perhaps to read *Hyb.* inſtead of *Aquit.* Since it's hard to Imagine why *Aquitaine* ſhould be ſo much as mention'd after *France*: And AGLIÆ inſtead of ANGLIÆ makes it probable that this was rather coin'd by the Third *Richard* (in whoſe Reign that way of Writing was grown faſhionable) than by the Second. In *Richard.* II.

(*a*) Gloſs. D. *H. Spelm.* in voce *Nobile.*

the

the reſt of his Coins (both of Gold and Silver) he exactly apes his Grandfather; and it had been well if he had as exactly traced him in his other ways and Methods of Government. We have, in our (*a*) Printed Books, the Title of one of his Statute-Laws, wherein are given the values of all the then current Coins of *Scotland*, as they were to paſs in this Realm; which, tho' omitted (as obſolete) by the Men of Law, ought nevertheleſs to be retriev'd and preſerv'd by our *Engliſh* Hiſtorian. It may be had in *Raſtal*'s Edition, and it provides that the *Scotch* Groat ſhall go for no more than Twopence *Engliſh*, their Half-Groat for our penny, and their penny for our half-penny, &c. Another (*b*) Act of Parliament in his Reign forbids the melting down of Groats, or half-Groats, for common uſes; and then, it ſeems, the *Scotch* Money was found to be of ſo baſe a Compoſition that the farther currency of it in this Kingdom was wholly prohibited.

(*a*) 14. *Ric.* 2. cap. 12. (*b*) St. 17. *Ric.* 2. cap 1.

Henry

Henry the Fourth's Laws concerning Coinage respect only the Silver-Money, requiring that (*a*) all foreign Money be sent out of the Kingdom, or re-coin'd; that (*b*) a Third of the Bullion be coin'd in half-pence and farthings; and that (*c*) *Gally-half* pence be not payable, as formerly, *in great deceit of the People.* By the Indenture, of his third year, we find that he also contracted for the Coinage of Rose-Nobles in Gold, of the same weight and fineness with those of *Edward* the Third; and his Groats, half-Groats, Sterlings and Half-Sterlings (or *Mailes*, as they were now call'd) were likewise of that King's Standard. That which *Speed* gives for his half-Groat belongs rather to his Son and Successor, as we shall see anon. *Henry* IV.

Henry the Fifth was a Prince of a more than ordinary greatness of Spirit, and it became such an one to assume, what was his undoubted Right, an (*d*) Imperial Crown. Yet neither he nor *Henry.* V.

(*a*) 4 *Hen.* 4. cap. 6. (*b*) 4. *Hen.* 4 cap. 10. (*c*) 11. *Hen.* 4. cap. 5. & 13. cap. 6. (*d*) Tit. of Hon. Par. 1. cap. 8. p. 134.

his

his Son appear in that Dreſs on their great Seals; nor do this King's Coins (as 'tis thought) carry ſo great a ſhare of Majeſty. His Gold Coins were the Roſe-Noble, (a) Half-Noble and Farthing; and, it ſeems, they were ſo debas'd that 'twas neceſſary to order that they ſhould be (b) recoin'd at the Tower *Gratis*. The Deſcription which (c) *Mr. Evelyn* gives of his *Roſe-Noble* muſt certainly belong to his Son's *Noble-Angel*: But what he ſays of his *Salus* is true, and agreeable to what we have from (d) other hands. This *Salus*, as likewiſe his Son's, had the Angel Saluting the B. Virgin (the one holding the Arms of *England*, the other of *France*) with the King's Title; and, on the Reverſe, *Chriſtus vincit. Chriſtus regnat. Chriſtus imperat.* which we find, very little alter'd, upon ſome of the earlyeſt Piſtols of the preſent *Lewis le Grand*. The Legend indeed belongs to France; and *Du Freſne* reckons the *Salut* amongſt the proper Coins of that Country. His Silver-Money was moſt-

(a) 9. *Hen.* 5. St. 3. cap. 7. & *Lowndes*, p. 37. (b) 9. *Hen.* 5. St. 2. cap. 11. (c) Numiſm. pag. 86. (d) *Coke's* Inſtit. lib. 3. cap. 30. p. 92.

ly

ly (as the (a) Statute directed) coin'd at *Calais*; tho ſome of his Peices have *Civitas London*, in the inner Circle of the Reverſe. The abuſes relating to the Mints are taken care of by ſuch Laws of his as make it (b) Felony to make, coin, buy, bring in or put in payment any *Galley-Half-pence*, *Suskin* or *Dotkyn*; and Treaſon (c) to clip, waſh or file, the right Sterling money. The reaſon for prohibiting thoſe in the former of theſe Conſtitutions was becauſe they were (d) baſe, and not of the fineneſs of Sterling: His right Silver-Coins were Groats (Ninety in a Pound *Troy*) Half-Groats, Pence, Halfpence or *Mails*, and Farthings. Theſe are ſuppos'd to be (e) diſtinguiſh'd (cheifly) from thoſe of *Henry* the Fourth by two little Circles, or Eylet holes, which are pretty deeply impreſs'd, a little below the Face, on each ſide of the neck; which are alſo anſwer'd by two more, amongſt the *Globuli* on the Reverſe. There's alſo a difference in their weight, *Henry* the

(a) 9. *Hen.* 5. St. 2. cap 6. (b) 3. *Hen.* 5. cap. 1. (c) 3. *Hen.* 5. cap. 6. (d) Inſtit. par. 3. cap. 30. p. 92. (e) Ita RR. D. Archiep. *Ebor.*

Fifth's

Fifth's Groat weighing only two penny-weight and Sixteen Grains, and they vary somewhat in the Stops betwixt the words in the Legend: Otherwise they are exactly alike.

Henry. VI. *Henry* the Sixth's large Ryal (as we have it in *Speed*) gives him crown'd with a Crown Imperial, seated on the Throne, with a Scepter in the right hand and Globe in the left, inscrib'd *Henricus Dei gra. Rex Angl. & Fran. Dns. Hib.* On the Reverse, the Arms of *France* and *England* Quarterly, and *Jesus autem transiens*, &c. In the first year of this Reign the Rose-Nobles, Half-Nobles and Quarter-Nobles, changed their Name and Value; being now call'd *Rials*, half-Rials, &c. and went at Ten Shillings, Five Shillings and Two and Sixpence. Instead of the two former were coin'd *Noble-Angels* (with *Michael* and the Dragon) and *Angellets*, at Six and Eight pence and Three and four pence; their being 134 of the latter in a Pound of fine Gold. His *Salut* was a *French* Coin, and very much resembled the Silver Groat which he likewise coin'd in that Kingdom; saving that the Groat wanted

wanted the Angel and Virgin over the Sheilds, and inſtead of *Chriſtus vincit*. &c. had *Sit nomen Domini benedictum*. The Mint was a while continu'd at *Calais*; where the (*a*) Maſter was obliged to coin Half-Nobles and Farthings of Gold; with Groats, half-Groats, Pence, Half-pence and Farthings; that the *Common People might have ſmall Gold, and white Money, as they reaſonably ſhould need*: And yet, the very year before, 'twas (*b*) enacted that the King's Council might order the coining of Money at *York* and *Briſtol*, or what other places they thought fit. Hereupon ſeveral Mints were accordingly erected in diverſe Places; and particularly one at *Dunwich*, as ſome (*c*) Pieces there coin'd (having *Civitas Donwic* on the Reverſe) do ſtill teſtify. Care being thus taken to furniſh every body with plenty of good Money, it was made Felony to (*d*) receive or pay *Blanks*: Which were a ſort of white Money, coin'd by *Henry* the Fifth in *France*; after his victory at *Agincourt*,

(*a*) 2. *Hen.* 6. cap. 6. & 12. (*b*) 1. *Hen.* 6. cap. 1. (*c*) *Cambd.* Brit. in *Suffolc.* & *J. Weaver.* Fun. Mon. p. 718. 720. (*d*) 2. *Hen.* 6. cap. 9.

his Style being then *Rex Angliæ, Regens & Hæres Franciæ.* Sir *Edward Coke* (*a*) ſays theſe Peices were call'd *Blanks*, or *Whites*, from their Colour; becauſe at the ſame time that King coin'd alſo his *Salus* of Pure Gold: But the *Blanks*, ſays he, were but valu'd at Eight Pence; and, becauſe of their baſeneſs, were decry'd. By *Eight Pence*, I ſuppoſe, he means two Thirds of this King's Groat; which was his higheſt Coin in Silver, and for which they ſeem to have been firſt deſign'd. But we are otherwiſe to underſtand Chancellour (*b*) *Forteſcue*; who affirms that, about the latter end of *Henry* the Sixth's Reign, four *French Sols* were valu'd at about Eight pence *Engliſh*. I know not upon what grounds *M. Evelyn* (*c*) aſſerts that this King endeavour'd to ſupply his Extravagancies by the beggarly Shift of Alchimy, and other Sophiſtications in his Coin. It's agreed that his Money (*d*) firſt carry'd the Arch'd, or Imperial, Crown; and 'tis obſervable that they are generally

(*a*) Inſtit. Par. 3. cap. 30. p. 92. (*b*) De laud. Leg. Angl. cap. 53. fol. 127. a. (*c*) Numiſm. p. 228. (*d*) Tit. of Hon. p. 135.

ſaid

ſaid to be minted at *London*, whereas his Father's and Grandfather's are (as generally) own'd, in the Legends of their Reverſe, to be coin'd at *Calais*.

The firſt of *Edward* the Fourth's Ordinances that we meet with, relating to Money, commands that all (*a*) Bullion of Gold and Silver, paid for Merchandiſe at the Staple, be coin'd at the Mint of *Calais*; and the Hiſtorian (*b*) pretends to inform us how that Act was put in Execution. *The King*, he ſays, *caus'd a new Coin to be made, whereby he gain'd much; for he made of an old* Noble a Royal, *which he commanded to go for ten Shillings. Nevertheleſs, to the ſame* Royal *was put Eight pence of Allay; and ſo it weigh'd the more by Eight Pence, being ſmitten with a new Stamp. He likewiſe made* half-Angels *of five Shillings; and Farthings of two and Six pence; Angelets of Six and Eight pence; and half-Angelets of three and four pence. He made Silver Money, of Three-pence a Groat; and ſo of other Coins after that rate, to the great harm of the Commons.* *Edward IV.*

(*a*) St. 3. *Ed.* 4. cap. 1. (*b*) *Stow's* Chron. p. 418. 419.

This Story, tho' very formally told, is not true: For *Edward* the Fourth was not the man that introduced this great Alteration; ſince, as far as it appears by the (*a*) Indentures, he only kept matters juſt as they were left by his Predeceſſor. Nor was *Calice* the only Mint in this King's Reign, ſince it appears that he had Groats coin'd (not only at *London*, but alſo) at *York*, and *Briſtol*. Some of theſe are in *Mr. Thoresby*'s Cabinet; and they have the Initial Letters *E* and *B* on the King's Breaſt, as well as the names of thoſe reſpective Cities more at large on their Reverſes. The ſame Author produces a Record, whereby the unfortunate Lord *Haſtings* is appointed Maſter of the King's Mints in *England*, *Ireland*, and *France*; and he ſeems yet farther to have enhans'd the value of all the Pieces both of Gold and Silver. Out of a pound weight of Gold he coin'd fifty Nobles of Eight Shillings and four pence; the Gold being (as at this day) twenty-three Carats, three grains and half, fine: And of a pound of Silver

(*a*) See an Account of Six of 'em in *Mr. Lowndes*'s Eſſay, p. 40, 41.

(as

(as *Henry* the Sixth had done before) he made a hundred and twelve Groats and a half. So that now the Groat weigh'd about ſix pence of our preſent Money; which is hardly half of what it did in the days of *Edward* the Third. This, well conſider'd, may perhaps convince us that *Edward* the Fourth's Groats are no ſuch Rarities as ſome have imagin'd: And 'twere indeed ſtrange if they ſhould be ſo, ſince we are ſure this King coin'd a very great deal of Money. We have plenty of two Sorts of old *Edward-Groats*; which differ much in their Weight, Bulk and Inſcription. Some that are pretty large and thick, above three Penny-weight, have the Letter *N* (in the words *Angl. Franc.* and *London*) form'd not much unlike to a *Roman H*; and theſe were undoubtedly coin'd by *Edward* the Third, who alſo Styles himſelf (what the other omits) *Dominus Hyberniæ.* Others are leſs and thinner, of the forementioned weight of a Modern Sixpence, and giving the Letter *N* in this Faſhion ℵ; and theſe are ascertainly *Edward* the Fourth's, tho' *J. Speed* has unduely beſtow'd one of them u-

on *Edward* the Third. For a farther Confirmation of this, there's one Groat of the (*a*) leſſer ſort (of the ſame Face and Reverſe with the reſt) ſtamp'd at *Waterford* in *Ireland*; which, tho' it be a very fair one, wants Eighteen Grains of what even an *Edward* the Fourth's Groat ought to weigh. Now, 'tis impoſſible this ſhould belong to *Edward* the Third; in whoſe time (as Sir (*b*) *John Davis* aſſures us) there was no Mint in that City. *Edward* the Fourth, he ſays, had one there; as he had likewiſe another at *Trim*, a Third at *Galway*, &c. And 'twas he, who (as the ſame learned Judge obſerves) firſt rais'd the value of the *Iriſh* Money a fourth Part: So that, whereas 'twas formerly equal in Weight and value to the *Engliſh*, now an *Engliſh* Threepence went at Four pence, and Nine pence for a Shilling, in *Ireland*. The Cuſtom was continu'd by his Succeſſors; inſomuch that we have Ninepences (as low as King *James* the Firſt) that were coin'd for *Iriſh* Shillings, and Four-pence-half-pennies their Half-

(*a*) Penes RR. D. Archiep. *Ebor.* (*b*) *Reports*, Caſe of *mix'd Money*.

Shil-

Shillings. That ſmall Coin which we have in *Speed* cannot be above the value of one of his Half-Groats, if it do indeed at all belong to him: For I very much doubt it, tho the great (*a*) *Selden* looks upon the thing as certain and unqueſtionable. The Croſſes, inſtead of Rays, betwixt every two of the Flowers on its three Crowns, will indeed ſufficiently diſtinguiſh it from thoſe of any of the three former *Edwards*; and ſo will the Quartering of the *French* and *Engliſh* Arms on the Reverſe. 'Tis probable this is an *Iriſh* Coin, and 'tis no great matter whether we bring it within the Statute (*b*) of this Reign, which prohibits all ſuch to run in Payments either in *England* or *Wales*: But, I think, 'twill not be hard to find it (tho' a great Rarity at this day) among thoſe *Groats* which F. *Moryſon* (*c*) tells us were common in the Kingdom of *Ireland* about the latter end of Queen *Elizabeth*'s Reign. Thoſe were, 1. *Broad-faced* Groats, minted for four pence, but worth Eight Pence. 2. *Croſs Keel* Groats, ſtamp'd (mark it!) with the Pope's Triple Crown. 3. *Demi-*

(*a*) Tit. of Hon. Par. 1. cap. 8. p. 135. (*b*) 17. R. 2. 4. cap. 1. (*c*) Itin. Par. 1. Lib. 3. cap. 6.

nus Groats, coin'd by ſuch of our Kings as wrote themſelves *Domini Hiberniæ*, 4. *Rex* Groats, by *Henry* the Eighth and *Edward* the Sixth, who only (before that time) had ſtyled themſelves *Reges Hiberniæ*. 5. *White* Groats, of ſo baſe an Allay that an *Engliſh* Shilling was worth nine of them.

Edward V. *Mr. Evelyn* (*a*) tells us that he had ſeen a complete *Series* of our antient Money, down from the Time of the Confeſſour, excepting only that of *Richard* the Third, which (he ſays) it has not been his hap to light upon. Surely he ſhould alſo have excepted that of *Edward* the Fifth: Unleſs we may ſay that this unhappy Prince ſurviv'd his Father too few weeks to be ſo much as reckon'd amongſt our *Engliſh* Kings. In the *Cottonian* Manuſcript *Livre de Monnoyes* we have indeed both the Groats and Pennies *de Edouard Cinquieme de ce nom Roy d' Engleterre Seigneur d' Irlande &c.* But, by the very Deſcriptions he gives of 'em, 'tis plain that Author was miſtaken. The Groats muſt be thoſe of *Edward* the Third;

(*a*) Bibl. *Cot.* Tiberius, II, 1.

and

and the Pennies appear to be the ſame with thoſe already mention'd under *Edward* the Second.

There are ſome Indentures, mention'd by *Mr. Lowndes*, that prove *Richard* the Third's contracting for the Coinage of Money (both in Gold and and Silver) of the value and Denomination with thoſe of the firſt year of *Henry* the Sixth: And 'tis not improbable but *Mr. Evelyn* may have met with ſeveral of his Groats, much lighter than thoſe of *Richard* the Second, and inſcrib'd with Characters of the like ſhape with thoſe of *Henry* the Sixth and *Edward* the Fourth. One of theſe I am Maſter of, which (with a moderate abatement, in Proportion to its Age) carries nearly Two-penny-Weight and three Grains, which was the exact ſtandard of *Richard* the Third's Groat; and there are ſeveral more of 'em in (*a*) other hands. In all theſe as well as thoſe of *Edward* the Fourth, the Face-ſide wants the outer Circle; the Letters of the Inſcription, reaching *Richard.* III.

(*a*) Penes RR. D. Archiep. *Ebor.* D. R. *Thoresby.* &c.

to

to the very extremity of the Coin, being generally imperfect: So that there was reaſon for the Proviſion made by Act of Parliament (in the next Reign) that the New Money ſhould have a *Circle about the outermoſt Parts*, &c.

Henry VII. *Henry* the Seventh's (*a*) current Coins of Gold, were his Soveraign, Half-Soveraign, Royal, Half-Royal and Quarter-Royal, Angel and Half-Angel; and of Silver, Groats, Half-Groats, Pennies, Half-pence and Farthings. Thoſe old Pennies that bore diverſe Spurs, or the Mullet betwixt the Bars of the Croſs, were to go only for half-pennies; and, to avoid clipping for the future, the King (by Advice of his Council) caus'd new Groats and Two-pences to be coin'd with outer Circles, and order'd that the whole Scripture ſhould be about every piece of Gold. The ſtandard for (*b*) Silver continu'd the ſame as in ſome former Reigns; and the Counterfeiting of foreign Money, current in this Kingdom, was made (*c*) High Treaſon. This laſt Sta-

(*a*) St. 19. *Hen.* 7. cap. 5. (*b*) 12. *Hen.* 7. cap. 5. (*c*) 4. *Hen.* 7.

tute

tute was fit to paſs into a Law in the Reign of this Wiſe and Provident King; who is ſaid to have left behind him no leſs than (*a*) five Millions and Three Hundred Thouſand Pounds in ready Money, and moſt of it in foreign Coin. In the twenty'th year of his Reign there were ſome few (*b*) Shillings coin'd; and thoſe (being only forty in a Pound of Silver) were fair and large Pieces, a full Third heavyer than ours at this day. They are now choice Rarities in our beſt furniſh'd Cabinets. Both his Groats and Twopences bear his half-faced Head, crown'd and inſcrib'd *Henricus VII. D. Gra. Rex. Angl. & Fran.* and, on the Reverſe, his Arms with *Poſui Deum*, &c. He is likewiſe ſaid to have (*c*) coin'd ſmall pieces call'd *Dandy-Prats*: But of what Metal, Value, or Faſhion, we are not inform'd.

The State of *Henry* the Eighth's Money was, like his Mind and Humour, very changeable and uncertain. In the beginning of his Reign, his Silver- *Henry.* VIII

(*a*) *Coke's* Inſtit. Par. 2. p. 576. (*b*) *Stow's* Survey of *Lond.* Ch. *Tower.* and *Cambd.* Rem. (*c*) *Cambd.* ibid.

Coins

Coins were as like his Father's as was poſſible: the Inſcription (excepting the change of VII. into VIII.) the ſame; his Image half-faced, the Money good ſterling, &c. And, ſome years after, good Proviſion was made for the Regulation of the Mints, particular (*a*) care being taken that all Farthings (not heretofore diſtinguiſhible from Halfpence) ſhould have the Portcluſe on one ſide, and the Roſe with a Croſs on the other: Nor are any other Coins of Silver there mention'd (as being then of known and common uſe) ſave only Groats, Half-Groats, Pence and Halfpence. But, tho' the Indentures, that are left, are as Silent in this matter as the Act of Parliament, we are ſure there were ſome *Teſtons* coin'd (in his early and beſt days) of fine Silver and half-faced, whereof one (*b*) has *Civitas Eboraci* on the Reverſe, inſtead of the more ordinary *Poſui Deum* &c. And here, by the way, let it be obſerv'd that even his leſſer Peices (not minted at *London*) generally omit that Inſcription, and have only the Name of the

(*a*) Vid. St. 14. & 15. *Hen.* 8 cap. 12. (*b*) Penes RR. Archiep. *Ebor.*

Place

Place (as *Civitas Cantor.* (*a*) *Turnaci*, &c.) where they were coin'd. His Pence and Halfpence give him ſeated in a Throne, crown'd and holding a Scepter in his right hand; On the Reverſe, the Arms of *France* and *England* Quaterly. Theſe, repreſenting his Majeſty much after the ſame manner as *Speed*'s Golden Coin had ſhewn us *Henry* the Sixth, tempted ſome to believe that they were alſo that King's Money, and that (therefore *Henry* the Seventh was not the firſt of our Kings who ſet the Arms on Silver: But that Conjecture is overthrown by ſome of 'em, having Cardinal *Wolſey*'s Hat and the Initial Letters of his Name (*T. W.*) on their Reverſe. In the twenty Second year of his Reign a Commiſſion was granted to this Cardinal for the Alteration of his Coin; whereby great Confuſion (*b*) happen'd in the value of our Money. Whether this Grant was not deſignedly obtain'd by the Cardinal's Enemies, who ſought his Deſtruction, I ſhall not pretend to determine: But 'tis obſervable that he dy'd under

(*a*) Ibid. (*b*) *Vaughan*, of Coinage. p. 112

an

an Arreſt in *November*, that very year; and one of the (*a*) Articles wherewith he ſtood charg'd was his placing the Hat under the King's Arms on the Groats he coin'd at *York*. 'Tis certain that, a good while before this, he had coin'd ſeveral Groats both at *York* and *Durham*; as did likewiſe Archbiſhop *Cranmer* afterwards at *Canterbury*, Archbiſhop *Lee* at *York*, and Biſhop *Tunſtal* at *Durham*. And the Practice was ſo far from being thought illegal, that when an Act of Parliament (*b*) preſcrib'd to the Royal Mint in the Tower, ſpecial Proviſion is made that thereby no Prejudice ſhould accrue to the Coiners of *York*, *Dureſme* and *Canterbury*. The Archbiſhops of *York* always claim'd it as their Right, from time immemorial; and it has been accordingly allow'd them, as appears by many repeated Charters to that purpoſe. In the Eighth year of *Edward* the Firſt, there was a *Quo Warranto* brought againſt *William Wickwain* Archbiſhop of *York*, for coining of Money there without the King's Licenſe; to which he put in his Anſwer, by his

(*a*) Inſtit. Lib. 4. cap. 8. (*b*) St. 14. & 15. *Hen.* 8. cap. 12.

Attour-

Attourney, as follows: "That he "and his Predeceſſors had, from time "immemorial, been ſiez'd *de duobus* "*Cuneis Monetalibus* at *York*. And, "for greater Evidence, he ſays that in "the time of *Henry* the Firſt, *Otho* She-"rif of *Yorkſhire* hinder'd *Gerard*, then "Archbiſhop from holding Pleas in his "own Court *de Monetariis ſuis*, and paſſing "Judgment upon them: And that, "upon *Gerard*'s complaint to the King, "a Writ was directed to the Sherif "in theſe words, *Volo & præcipio ut* "Gerardus *Archiepiſcopus* Ebor. *in* "*Terris Eccleſiarum ſuarum, & in omni-*"*bus Terris Archiepiſcopatûs* Ebor. *Pla-*"*cita ſua in Curiâ ſuâ habeat de Monetu-*"*riis ſuis & de Latronibus & omnibus* "*aliis, & omnes Leges & Conſuetudines* "*ſuas de omnibus habeat, ſicut &* Thomas "*Archiepiſcopus melius habuit tempore* "*Patris vel Fratris mei*, &c. And he ſays "farther, that he and his Predeceſſors "uſed to have a certain third Mint "[*Cuneum*] which the King now has in "the City of *York*, and he prays that "his Right herein may be ſaved to him "&c. Which Plea was allow'd. *Mr. Evelyn*'s (*a*) account of the Alterations,

(*a*) Numiſm. p. 12.

made

made by the Cardinal and other Prelates, is a little darkly expreſs'd. He ſeems to ſay that their own Faces were impreſs'd upon the Money they coin'd: Which certainly is a Miſtake. In this they all agreed that their Metal was much coarſer than had formerly been minted: But yet the grand debaſement of all was the King's own, after he had taken upon him the ſtyle of *Rex Hyberniæ*, and a little before his Expenſive and inſignificant Conqueſt of *Bologne*. This was the Thirty-ſixth year of his Reign; when, having waſted the moſt immenſe Treaſure that ever any Monarch of *England* was Maſter of, he was at laſt reduced to thoſe miſerable Straits as to ſuffer Parſon *Brock* to make him a (*a*) Copper Noſe. 'Twas now that his (*b*) broad-faced Shillings were coin'd; being large Pieces of thrice the weight of ſuch Groats as were then made of the ſame Metal. On theſe was the King's Head (whence they had alſo the Name of *Teſtons*) full-faced and crown'd, with *Henricus* 8. *Dei Gra. Angl. Franc.*

(*a*) *Camden's* Remains. (*b*) *Stow's* Chron. p. 587.

&

& Hib. Rex. and the Reverſe had a Roſe and Crown, betwixt *H* and *R* Crown'd, with the Common Inſcription *Poſui Deum Adjutorium* (inſtead of the more uſual *Adjutorem*) *meum.* Upon the firſt coining of theſe Shillings (in the Thirty-fourth year of his Reign) his Money had only a fifth Part Allay; but, two years after, 'twas half Copper; and, in his Thirty-Seventh year, it had only a Third of Silver. The Scheme of his Gold Coins, as the Indenture gives it, runs thus:

A°. 1. Hen. 8. A Pound of fine Gold made.

	l.	s.	d.
——Soveraigns, 24. at	01	02	06
——Rials. 48.	00.	11.	03.
——Angels, 72.	00.	07.	06.
——George-Nobles, 81.	00.	06.	08.
—— Half-Angels, 144.	00.	03.	09.
——40-penny-peices, 162.	00.	03.	04.

A Pound of Crown-Gold made——

—— Crowns, 100. ½ at	00.	05.	00.
——Half-Crowns, 201	00.	02.	06.

These continu'd the *Species* in that Metal; tho' afterwards they were somewhat debas'd and lower'd in their value.

Edward VI.

Edward the Sixth presently set himself to the remedying this unhappy (a) State of the Coin; and that with an Application wonderfully beyond what could have been expected from a Prince of his tender Years. Yet, such Reformation as was necessary was not to be wrought on a sudden; and therefore we may observe that the distemper was strugled-with some years before 'twas perfectly subdu'd. There were two several sorts of *Testons*, no better than his Father's in the Intrinsic value of the Metal, and much inferiour in Bulk, which were coin'd in his third and fifth years. Both these gave him half-faced, with his Titles as on the purer Money below: But they differ'd in the Legends on the Reverse; the one bearing *Timor Domini est fons vitæ*; MDXLVIII. and the other *Inimicos ejus induam confusione.* 'Twas on the

(a) See his Journal amongst Bishop *Burnet*'s Collection of Records for the 2 *d.* vol. of his Hist. of the Reform.

for-

former of these that honest Bishop *Latimer* made his merry Remark, that it was such a (*a*) *pretty little Shilling* that he had like to have put it away for an old Groat; and yet (whatever were the Silver) the inscrib'd sentence he reckons to be golden, and hopes it would be always *Printed in the heart of the King*, &c. In the latter end of his fifth year, both these and those of Kind *Henry* were cry'd down, first from Twelvepence to Ninepence, and (about a Month after) to Sixpence: And, at the same time, the following new Coins were given in good antient Sterling-Standard.

Fine Gold,	s.	Crown-Gold,	s.
Soveraign,	30	*Soveraign*,	20
Angel,	10	*Half-Sovereign*,	10
Angelet,	5	*Crown*,	5
		Half-Crown.	

Silver,
Crown,
Half-Crown,
Shilling,
Six-pence.

(*a*) *Latimer's* Sermons, fol. 30. a. and 44. b.

The Four laſt differ'd moſtly in Size and Weight, all of 'em having the King's Titles thus, *Edwardus VI. D. G. Angliæ Franc. & Hib. Rex.* and, on the Reverſe, the King's Arms with *Poſui Deum*, &c. Only, the Crown and half-Crown gave him on Horſe-back, ſubſcrib'd 1551. whereas the Shilling and Sixpence (as in *Speed*) have no more than his Head full-faced, &c. The finer Soveraign had on its Reverſe *Scutum fidei proteget eum*; and the Coarſer *Jeſus autem tranſiens* &c. At the ſame (*a*) time were coin'd ſmall peices of baſe and mix'd Metal; a Penny with a double Roſe, half-penny with a ſingle-Roſe, and Farthing with a Portcluſe: But the Indenture makes theſe of the ſame fineneſs with the Crown, &c,

Q. *Mary.* In the firſt year of Queen (*b*) *Mary's* Reign, Proclamation was made for the currency of theſe New Coins: the Soveraign (at 30 s.) and Half-Soveraign, Angel (at 10 s.) and half-Angel, in Gold; and the Groat, half-Groat and

(*a*) *Stow's.* Chron. p. 606. (*b*) Id. p. 616.

Pen-

Penny, in Silver. All baſe Coins were order'd to go at the ſame rates that were ſet by K. *Edward.* Of the gold Coins I have only the laſt, whereon we have *Michael* and the Dragon with *Maria D. G. A. Fr. & Hib. Reg.* On the Reverſe, the Queen's Arms in a ſhip, creſted with a Croſs, a Star and the Letter *M*, and inſcrib'd *A Dno factum eſt iſtud.* Her Soveraign, I ſuppoſe, is the ſame with what *Mr. Evelyn* (*a*) calls a Ryal, which he ſays was Scatter'd at her Coronation: Whereon was the Queen, veſted in her *Regalia* and inthron'd, with *Maria D. G. Ang. Fra. & Hib. Regina. MDLIII.* About the Arms on the Reverſe (placed in the Center of a Roſe full blown) *A Dno. factum eſt iſtud & eſt mirabile in ocul. nris.* However, the Engraver ſeems to have committed a miſtake, in placing the Scepter in her Left-hand and the Globe or Croſs in her Right. Her Groat gives her Head Crown'd and *Maria D. G. Ang. Fra. & Hib. Reg.* On the Reverſe, her Arms with *Veritas temporis filia.* After her Marriage the

(*a*) Numiſm. pag. 91.

ſtyle was alter'd on her Coin, as well as elſewhere. *Speed* gives us the Draught of a very beautiful Shilling, bearing the King and Queen's Heads, face to face, with a Crown above and the year of our Lord 1554. their Titles *Philip. & Maria D. G. R. Ang. Fr. Neap. Pr. Hisp.* On the Reverſe the Arms of *Spain* and *England*, in different Shields, crown'd and inſcrib'd *Poſuimus Deum Adjutorem noſtrum.* Others were coin'd the year after, whereon the Arms were Quarter'd; and the ſtyle ran only *Philip. & Maria D. G. Rex & Regina Angl.* The Reaſon of which change was becauſe *Charles* the Fifth had then reſign'd the Kingdom of *Spain* to his ſon *Philip*; and therefore he was no longer *Princeps* but *Rex Hiſpaniarum.* Their Groats had only the Queen's Head Crown'd, but the Legend named them both, as in the Shilling laſt mention'd. *Cambden* (*a*) mentions their Crown of Gold, whereon was *Mundi ſalus unica*: But whether the Pieces ſtruck in remembrance of *Wyat's* (*b*) Rebellion, &c. were Gold or Silver, I know not.

(*a*) Remains, Chap. of *Money.* (*b*) See *Mr. Evelyn's* Numiſm, pag. 92.

The

The last years of *Henry* the Eighth brought greater Corruptions in the Money than could be remov'd in the two following Reigns. Q. *Mary*, we see, went no farther in the redressing of this Grievance than her Brother had gone before her: But Q. *Elizabeth* happily finish'd the Work; insomuch that *Moneta ad suum valorem reducta* is very deservedly amongst the *Encomia* on her Tomb at *Westminster*, and an (a) Act of Parliament very early witness'd for her, that *by her great goodness new Monies or Coins were reduced to as much fineness as ever had been in any time of her Noble Progenitors.* Her first business was to (b) mark all the base peices with either a *Greyhound*, *Portcluse*, *Lion*, *Harp*, *Rose* or *Flower de Lis*; and soon after follow'd her (c) crying down the finest *Testons* from Sixpence to Fourpence halfpenny, those of a Second rate to Twopence, and the rest to nothing. This was done in the latter end of her Second year: But (so unconstant are the best directed humane Politicks) the Q. Elizabeth.

(a) St. 5. *Eliz.* cap. 11. (b) *Camb.* Remains. (c) *Stow's* Chron. p. 646.

very (*a*) next year following the Majority of her Council affected and adviſed a freſh abaſement of the Coin. This was vehemently oppos'd by the wiſe and honeſt Treaſurer *Burleigh*, then Secretary of State; who would never give way to any ſuch reſolution in his Time. Hereupon, a Proclamation (*b*) introduced the Currency of new Sixpences, Groats, Threepences, Twopences, Pence, Penny-halfpennies, and Halfpenny-farthings, all of pure Silver; the firſt of theſe being of that beautiful coin which was continu'd for ſeveral years after, and whereof we have a fair Draught in *Speed*'s Hiſtory. Afterwards we have (*c*) Shillings (and other larger peices) of the ſame fineneſs; among which the Portcluſe-Shilling is perhaps the moſt rare and remarkable. It bears the Queen's Arms crown'd, as likewiſe the two Initial Letters of her Name and Title (*E. R.*) with *Elizabeth. D. G. An. Fr. & Hib. Regina:* And, on the Reverſe, a crown'd Portcluſe inſcrib'd *Poſui Deum* &c. Before the

(*a*) Sir *Rob. Cotton*'s Poſthuma, p. 179. (*b*) *Stow*, p. 647. (*c*) Ann. 25. & 43. See the Indentures in *Mr. Lowndes*'s Eſſay.

Queen's

Queen's Titles we have here an Annulet or O; whereas on others there's an A, and on ſome a Dove, &c. The laſt of theſe has been thought to reſemble a Duck or Drake; and the current Tradition is that theſe Shillings were ſtruck (Medal-wiſe) in memory of the famous Expedition of Sir *Francis Drake*, which was finiſh'd in her twenty-ſecond year. In this flouriſhing condition was our *Engliſh* Silver-Money during her long and Proſperous Reign; the Inſcriptions on every piece (from a Crown, in her two laſt years, to threepence) being the ſame. Some of her leſſer Coins had *Civitas London* on the Reverſe, inſtead of the common *Poſui Deum* &c. on the larger. She caus'd indeed ſome *Iriſh* Shillings (call'd *Harpers*, from the Arms of that Kingdom ſtamp'd upon them) to be made of a baſer kind than the *Engliſh*, ſo that they uſually paſs'd for Ninepence here: And towards the latter end of her Reign, ſhe paid her Army there with yet much baſer Coin, having three (*a*) Parts Copper, and a fourth

(*a*) F. *Moryſon*'s Itin. Par. 1. lib. 3. cap. 6.

on-

only Silver. This our Goldſmith's valu'd at no more than Twopence-halfpenny, tho' 'twas commanded by Proclamation to paſs at twelvepence in that Kingdom, deſign'd for the ſpeedy impoveriſhment and reduction of the Rebels there. In the year 1600. (*a*) She contracted for the coining of Angels, Half-Angels, Pieces of an Angel and half and three Angels, of the fineſt Angel-Gold; and (of a coarſer Crown-Gold) Peices of Twenty, Ten and Five, Shillings. The former ſort had *A Domino factum eſt iſtud & eſt Mirabile* on their Reverſe; and the latter *Scutum fidei protegit eam*. The Indentures of that year (thoſe, at leaſt, that *Mr. Lowndes* met with) do not mention the Pieces of Angels and a half, nor three Angels; but they reckon alſo, what my Author omits, her Quarter-Angels at Two Shillings and Sixpence. They ſpeak likewiſe of Crown-gold coin'd (the ſame year) into Soveraigns of twenty Shillings, Half-Soveraigns, Crowns and Half-Crowns. Others of 'em ſay that, in her Twenty-Sixth year, ſhe caus'd Dou-

(*a*) Id. Ibid.

ble

ble Nobles (the ſame, I ſuppoſe, with *Edward* the Sixth's finer Soveraigns) and Nobles to be coin'd of fine Gold, whereof the former went at Thirty Shillings, and the latter at fifteen. The more antient Coins in Gold, as well Foreign as Domeſtic, which went here in Payments about the beginning and middle of her Reign, are accounted for by (*a*) Sir *Thomas Smith*, who has left us a Table for the ready diſtinguiſhing of 'em by their ſeveral Weights: But (as now Printed) 'tis far from being ſo exact as we could wiſh it. Before the Union, there never was any braſs or Copper-money coin'd by any of the Kings or Queens of this Nation, tho' moſt of the Neighbouring Princes and States had their halfpence and farthings (ſome time before the death of Q. *Elizabeth*) in one or both of thoſe Metals.

(*a*) Append. to his Life, by J. S. p. 137.

The end of the Third and laſt Part.

AN

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